

Award No. 4837

Docket No. 4702

2-WM-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'

DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)

WESTERN MARYLAND RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the provisions of the controlling agreement when on December 21 and 22, 1962, they assigned the Hagerstown wreck crew members to man the Ridgeley, West Virginia wreck crane while rerailling cars at Hagerstown, Maryland.

2. That accordingly, the Carrier be ordered to additionally compensate each member of the Ridgeley, West Virginia wreck crew for a total of twenty-two (22) hours each. The following is a list of the regularly assigned wreck crew members that were not called and are hereafter referred to as the Claimants:

M. Bobo
R. E. Thomas
L. E. Ellifritz
R. D. Bradshaw, Jr.
J. O. Phillips
T. W. Maiers
P. R. Emerick
D. N. Bagatti

EMPLOYEES' STATEMENT OF FACTS: On December 21, 1962, Carman Crane Operator J. L. Potts was called at 11:30 P.M., to go with Western Maryland Outfit, Crane 1669 and idler car, stationed at Ridgeley, West Virginia, to perform wrecking service at a derailment at Hagerstown, Maryland.

Hagerstown wreck crew members were called to man the Ridgeley crane while performing this wrecking service. Crane Operator Potts performed all of the crane operating. J. L. Potts is one of the regular assigned crane operators on the Ridgeley wreck crew.

After the right-of-way was cleared of this derailment, Crane Operator Potts returned to Ridgeley, West Virginia, and was relieved at 9:30 P.M. on December 22, 1962.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Paragraph 4 of Rule 96 provides as follows:

"(4) When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

The Ridgeley crane and operator were not used to rerail cars within the Hagerstown yard limits on December 21st and 22nd, and outside of the Hagerstown yard limits on December 23rd, 1962. The Ridgeley wrecking crew was used with them on the 23rd, but not on the other two days, the Carrier contending that they were not required by the rule because the derailment was within the yard limits of Hagerstown. The employes contend that "yard limits" refer to those of the wrecking crew and not the place of derailment.

Awards Nos. 853 and 857 are the earliest awards cited concerning this and similar rules. The record of Award No. 853 indicate that it was the first claim of the kind to be decided by this Division; it also shows that a Cedar Rapids wrecker was sent "to Montieth, Iowa (a station * * *) to rerail an engine. This suggests, but does not affirmatively show, that the derailment was within Montieth yard limits; however, without examining into or commenting upon that circumstance, the claim was sustained under an identical rule with Rule 96(4).

In Award No. 857 the claim was sustained under a rule which differed only in requiring "a sufficient number of the regularly assigned crew." The derailment was "at Burt Street, Syracuse," where an overpass was being constructed within city limits, and presumably within yard limits; but that point was not discussed.

Both Awards Nos. 853 and 857 were made without referees, and indicate that in 1942 this Division considered "yard limits" to mean those of the wrecking crew's home point, since they were not concerned with the exact locations of the derailments.

In Award No. 1069, this Division stated its understanding of the rule when it said:

"The question to be determined is whether or not the entire wrecking crew from the New Haven should have been called to accompany the New Haven wrecking outfit. * * *

Since this was a wreck outside the yard limits insofar as the New Haven crew was concerned, * * * the regularly assigned crew should have accompanied the outfit. There was a violation of the agreement."

In Award No. 1362 the carrier admitted the violation of a rule like that in

Award No. 857, but contested the pay rate. In that instance the derailment was at the Paragould turn-table pit, which must have been within yard limits there. Without express reference to the point of derailment the claim of the Poplar Bluff wrecking crew was sustained.

In Award No. 1702 this Division said:

"Carrier also says this work was done within the yard limits at Armourdale and therefore the wrecking outfit was not taken 'outside of yard limits' within the meaning of the rule. We think the language 'outside of yard limits' as contained in Rule 114 relates to where the wrecking crews are assigned to their respective outfits which, as far as No. 95008 is concerned, was Des Moines.

* * * *

Award of this Division have held, under like or comparable rules, that the regularly assigned wrecking crew must accompany the outfit when taken for service outside of yard limits. See Awards 853, 857, 1609 and 1362."

No awards to the contrary have been cited, and the question seems not to have been raised subsequently until the present claim, due to the fact that in each controversy the parties have differed upon other grounds that the interpretation of this provision.

Claim 2 is for pay for the total 22 hours between the call of the crane operator on December 21 and his release at home point on the 22nd. In Award No. 1702 this Division stated the measure of compensation for work lost as

"the pro rata rate of the position, that is, the rate which the occupant of the regular position to whom it belonged would have received if he had performed the work. This would eliminate all traveling and waiting time but would entitle claimants to be paid at the rate of their position for all time paid Wrecking Engineer Frank Walters, either pro rata or overtime, while he worked with outfit No. 95008 at Armourdale. See Award 1362 to the same effect."

A W A R D

Claim 1 sustained.

Claim 2 sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy

Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.