

Award No. 4838**Docket No. 4704****2-L&N-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. 91, RAILWAY EMPLOYEES'****DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)****LOUISVILLE AND NASHVILLE RAILROAD COMPANY****DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Agreement was violated when a wrecker from the I. C. Railroad was used to clear a derailment on the L&N Railroad at Paducah, Kentucky on April 13, 1963.

2. Accordingly, the L&N Railroad should be ordered to additionally compensate all members of its Bruceton, Tennessee wrecking crew, namely, E. L. Wilson, J. T. Bayless, W. M. Collins, R. E. Holiday, B. J. Carver, Fisher Teague and C. M. Reeves, for 10 hours, each, at the applicable rates of pay, the time required to clear the derailment, plus the necessary travel time.

STATEMENT OF FACTS: The Louisville and Nashville Railroad Company, hereinafter referred to as the carrier, maintains a wrecking outfit at Bruceton, Tennessee which was manned at the time of the subject derailment by a regular assigned crew composed of the following carmen, hereinafter called the claimants:

Name	Work Week	Assignment
1. E. L. Wilson (Wrecker Foreman)	Monday through Friday	7 A.M. to 3 P.M.
2. J. T. Bayless	Tuesday through Saturday	7 A.M. to 3 P.M.
3. W. M. Collins	Monday through Friday	7 A.M. to 3 P.M.
4. R. E. Holiday	Thursday through Monday	7 A.M. to 3 P.M.
5. B. J. Carver	Friday through Tuesday	11 P.M. to 7 A.M.
6. Fisher Teague	Tuesday through Saturday	7 A.M. to 3 P.M.
7. C. M. Reeves	Monday through Friday	7 A.M. to 3 P.M.

At approximately 9:45 P.M., on Thursday, April 11, 1963, an L&N Switch Engine derailed the following cars in the L&N Yard, at Paducah, Kentucky: I.C. 23700, SAL 7590 and CB&Q 41886. The General Foreman from Bruceton which is 86 miles from Paducah, and the nearest point on the L&N where a wrecker is stationed, inspected the derailment and decided that a wrecker would be needed to rerail the cars. As a result of this decision, and inasmuch as the mainline was not blocked and no emergency existed, Wrecker Foreman E. L.

Under the circumstances cited in this particular case, the Board finds that the contention of the employees that all wrecking service on this carrier be performed by NC&StL crews to the exclusion of foreign equipment and crews, or that they be compensated when foreign equipment and crews are used, cannot be justified. It is not a case of using other than regular employees for the purpose of economy or for the purpose of defeating the intent of the agreement."

In Second Division Award No. 4400, covering case where claimants contended carrier should have called upon its own nearest wrecker, 85 miles away, instead of using foreign equipment, this Board held that:

"It has long been recognized that the reciprocal use of wrecking outfits does not violate the intent of rules which are similar to Rule 152 and Rule 153 of the current agreement between these parties. See Award #1176. For the reasons stated above, the claim should be denied."

As set forth in carrier's point No. 2, it has not contracted away its right to have work of the nature involved in this dispute performed in the most efficient and economical manner, and it has been recognized in many instances by your board that a carrier retains those rights which have not been waived or limited by agreement.

CONCLUSION: Carrier has shown that there is no basis for the claim and respectfully requests that the claim be denied in its entirety.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The derailment occurred in the yard at Paducah at 9:45, Thursday evening. An Illinois Central wrecker stationed there was used on Saturday morning from 8:00 o'clock until noon to rerail the cars, instead of calling the nearest L & N wrecker, which was stationed at Bruceton, 86 miles away.

The Carrier contends that it has been the practice, without objection by the Organization, to interchange wrecker service with other carriers, and that it would be unreasonable to require a 170 mile round trip for the Bruceton outfit and crew. Without stating the circumstances it cites fifteen incidents between 1957 and 1963 in which wreckers and crews were borrowed from other carriers, and one incident in 1963 when an L & N outfit was loaned to the Pennsylvania Railroad, the crew in each case accompanying the outfit.

The Organization replies that the Bruceton outfit has been sent on the 170 miles round-trip to Paducah on numerous occasions, that the borrowing of outfits from other carriers is justified only in emergencies, and cites two instances in 1947 and 1959 when claims were made and allowed because Southern Railroad outfits were used instead of L & N crews and wreckers.

This record of incidents between 1957 and 1963 is insufficient to show an established practice on this property to interchange wrecking outfits with other carriers when no emergencies are presented, as here, where 34 hours were allowed to pass before commencing to re-rail the cars.

Denial Awards 1124 and 1176 relate to similar claims on behalf of this same wrecking crew while it was maintained by the Nashville, Chattanooga and St. Louis Railway before the consolidation of that line with this Carrier. In Award 1124 this Division found that an emergency existed, and in Award 1176, it found a sufficient showing of past practice, neither of which is true in this case; therefore, neither Award is persuasive. In Awards 1065 and 1068, this Division denied similar claims because emergencies existed.

This Division has long held that the measure of compensation for work lost is pay at pro-rata rate for actual time worked, without reference to traveling and waiting time. See Awards 1362 and 1702.

This work was done by the Illinois Central outfit between 8:00 A.M. and noon on Saturday. Four of the Claimants worked and were paid for those hours; but it was a rest day for Claimants Wilson, Collins and Reeves. Those three Claimants are therefore entitled to four hours pay at pro-rata rate. Dated at Chicago, Illinois, this 11th day of March, 1966.

A W A R D

Claim 1 sustained.

Claim 2 sustained as to Claimants Wilson, Collins and Reeves to the extent indicated in the 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.