

**Award No. 4840**

**Docket No. 4709**

**2-B&O-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)  
THE BALTIMORE AND OHIO RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

(1) That under the current agreement the Rochester, New York, wrecking crew was denied the right to wrecking service when the Carrier assigned Maintenance of Way section laborers to augment the Salamanca, New York wrecking crew.

(2) That accordingly the Carrier compensate the five (5) regular assigned members of the Rochester crew for the period from 3:00 A.M. to 7:30 A.M. on January 18, 1963, at the penalty rate.

**EMPLOYEES STATEMENT OF FACTS:** On January 18, 1963, the following Carmen, N. L. Oliver, P. Coviello, William Johnstone, Jan Dyminski and George Sutherland, hereinafter referred to as the claimants, reported for work at their regular positions at 7:30 A.M. at Rochester, New York, on the Baltimore & Ohio Railroad, hereafter referred to as the carrier.

At 2:00 A.M. on this date, there was a derailment of thirty-five (35) cars at Wyoming, New York on the carrier's right of way. Wyoming is approximately midway between Salamanca, New York and Rochester, New York.

The Salamanca wreck crew with their equipment was called at 3:00 A.M. on this date. The maintenance of Way trackmen were called at 4:30 A.M. The Rochester assigned wreck crew was called at 7:30 A.M. on this date by Mr. W. A. Maier, General Locomotive Foreman, as stated by the claimants.

Maintenance of Way section laborers were on the scene of the derailment at the time the Rochester crew arrived at approximately 9:15 A.M. The section men had already removed six (6) cars by the use of bulldozers equipped with cables and hooks and were immediately relieved by the Rochester crew upon their arrival.

To summarize the facts. The Salamanca crew was on one end of the wreck and the section men were on the opposite end performing wrecking service until relieved by the Rochester crew.

have blocked the main line of a carrier, an emergency situation was thereby created and that where because of the magnitude of the accident, there is not sufficient equipment of the type needed to cope with the total situation at hand in order to clear the tracks within a reasonable length of time, a carrier was perfectly justified in obtaining assistance from other sources to alleviate the emergency situation and to clear such main track.

In the instant case such an emergency situation prevailed throughout the relatively short period of time represented by the instant time claims. In fact, it was some considerable time after track work commenced that the main track was finally cleared.

What occurred in the instant case is not an unusual occurrence or happening on the property. Necessarily in all accidents or serious derailments involving track and roadway damage, it is established practice to summon immediately employes coming under the scope of the Maintenance of Way Agreement. That is all that occurred in the instant case. In no fashion whatever did such work infringe upon the services performed by either the Rochester or Salamanca wreck crews. Had the derailment not been handled in the fashion indicated by the record, work related to placing the roadway and track in operating condition would have been delayed for an inordinately long period of time. The serious consequences of any such happening must be obvious to this labor tribunal.

In summary the carrier submits that the claim in this case at both Parts 1 and 2 are totally without merit. The carrier respectfully requests that this Division act to deny this claim in all its parts.

**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 were given due notice of hearing thereon.

Thirty-five cars were derailed at 2:00 A.M., on a single track line between Salamanca and Rochester, where wrecking outfits are maintained. The Salamanca outfit was called at 3:00 A.M. to start clearing the wreck at one end; Maintenance of Way bulldozers and employes were called at 4:30 A.M., and at about 5:00 A.M. started clearing the wreckage at the other end.

Upon reporting for work at 7:30 A.M., the starting time of its members' regular assignments, the Rochester wrecking crew was sent to the wreck, arrived there at 9:15, and found the section men and bulldozers still clearing wreckage.

The carrier contends that this was an emergency justifying the use of other than wrecker equipment and crew; but it took the Claimants only an hour and three-quarters to reach the wreck after they were called, and if reasonably called, there would have been no substantial loss of time. Clearing a wreck with power equipment is normally the work of regular wrecking crews, whose training, experience and equipment is especially fitted for it. The fact that the Rochester crew was finally called shows that it was needed.

The physical facts and the needs presented by a thirty-five car derailment on a single track line were immediately known to the Carrier, and no new emergency was presented to it at 4:30, two and one-half hours later, when it called the Maintenance of Way men and equipment.

This Division has long held that the measure of compensation for work lost is at pro-rata rate for the working time actually lost, but without traveling and waiting time. Awards 1362 and 1702. According to the record, the Claimants were paid from 7:30 A.M., their regularly assigned starting time. The section men had been working since 5:30 clearing wreckage from the line. Each of the Claimants is therefore entitled to pay for two hours at pro-rata rate.

**A W A R D**

Claim 1 sustained.

Claim 2 sustained 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.