



Award No. 4932

Docket No. 4798

2-NYC-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

NEW YORK CENTRAL RAILROAD (Eastern District)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling agreement, particularly Rule No. 158 Carmen's Special Rule, when the Carmen regular members of the Wrecking Crew were not allowed to accompany the Wrecking Outfit to the Derailment at West Albany, N.Y., August 3, 1962.

2. Therefore, the members of the wrecking Crane Crew shall be compensated the same number of hours as the Crane Engineer who accompanied the Wreck Crane Outfit, at the rate of time and one-half.

R. Foro	Groundman	14	hrs.	time-one-half	1 hr.	straight time
F. Ciperski	"	14	"	"	"	"
L. Carrk	"	14	"	"	"	"
G. Scaringe	"	14	"	"	"	"
S. Miles	"	14	"	"	"	"
J. Bonafide	Rigger	11½	"	"	"	"

EMPLOYES' STATEMENT OF FACTS: On August 2, 1962 a fill of 5 cars of train AB-21 were derailed at West Albany, New York.

On August 2, 1962 the Engineer and Rigger (carmen) were ordered to report at 4:30 A.M. at Selkirk, New York to accompany the wreck crane outfit to the derailment at West Albany, N.Y., August 3, 1962.

The remainder of the wreck crane crew were ordered to report to the Selkirk, N.Y. Repair Track at their regular starting time 7:00 A.M. At approximately 8:10 A.M. the remainder of the wreck crane crew were transported in Taxicabs from Selkirk, N.Y. repair track to the derailment at West Albany, N.Y. approximately 13 miles from Selkirk, N.Y.

The wreck crane outfit was placed in regular train TS-1 and taken to West Albany, N.Y. the scene of the derailment, where another engine was assigned to the Outfit.

(presently one of the Operating Districts of this Carrier) the pertinent part of which reads as follows:

"Beg to advise Rule 158 provides 'When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany outfit.' It was not the intent of this rule to prohibit sending wrecking crew to home station by passenger train in advance of the wrecking outfit."

This answer was made to an inquiry as to whether or not wrecking crews may be sent to point of wreck on passenger train and returned to home station in the same manner.

The same assistant director in answering an inquiry of the Cincinnati, Indianapolis & Western Railroad as to intent of Rule 158 in his letter of February 4, 1920 rendered a like interpretation reading as follows:

"Concerning the question raised in your Submission as to whether or not it is premissible to send wrecking crew to their home terminal on a passenger train and bring wrecking outfit back on a freight train, will advise the rule does not prohibit such practice."

The assistant director's replies, just quoted, clearly indicate the intent of the rule was that the crew could be transported to and from the point of wreck in any manner and they need not physically accompany the crane.

Thus, in accordance with the interpretation originally placed upon the rule by the authority who promulgated the rule, the provision respecting the crew accompanying the outfit was not intended to prohibit transporting the crew to and from the point of wreck by a mode of transportation other than the one used to transport the wrecking outfit.

For the reasons given hereinbefore, carrier submits that claimants have been properly compensated and are not due any additional pay, and that the instant claims should be denied.

Without prejudice to the foregoing, carrier would be remiss if it did not take exception to the claim which requests payment for time not worked at the rate of time and one-half. Your board in many awards has held that the proper rate for time not worked is the pro rata rate. See, for example, Award 3970.

All the facts and arguments presented herein have been made known to the employees either orally or by correspondence in the handling of the claim on the property.

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.

On August 3, 1962, a derailment occurred at West Albany, N.Y. Carrier's wrecking crane and crew are headquartered at Selkirk, New York, a distance of about 15 miles by highway between West Albany and Selkirk.

Carrier ordered the crane and equipment from Selkirk to West Albany, at 4:30 A. M. August 3rd, 1962. The Crane Engineer and a rigger, a Carman, accompanied the equipment, by rail, while the remaining five members of the crew were sent by taxicab, at 8 A. M. August 3rd to the site of the derailment, and after completing the rerailment the crew members were returned to Selkirk at 7 P. M. The Crane Engineer returned to Selkirk at 6:30 A. M. August 4, 1962 and was released from duty.

Rule No. 158 provides that:

"When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit."

Award by this Division, No. 4910, is applicable to the facts here before us, and the claims should be sustained on the same basis as was paid the Crane Engineer at rates applicable to the crew members.

AWARD

Claims sustained as per the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July 1966.