



Award No. 5032
Docket No. 4918
2-NYNH&H-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. In violation of Rule 111, of the current agreement, the New York, New Haven & Hartford Railroad Co., failed to call L. Altieri, J. Granfield and E. Hunt, regularly assigned members of the New Haven wrecking outfit, for wrecking service with the M-16 truck, to Shelton, Conn., on Tuesday, December 17, 1963.

2. That the New York, New Haven & Hartford Railroad Co., failed to call L. Altieri, H. Fay and J. Granfield for wrecking service with the M-16 truck, to Monroe, Conn., on Tuesday, December 31, 1963.

3. That the New York, New Haven & Hartford Railroad Co., failed to call L. Altieri, H. Fay and E. Hunt, for wrecking service with the M-16 truck, to Shelton, Conn., on Monday, January 6, 1964.

4. That the New York, New Haven & Hartford Railroad Co., failed to call E. Hunt for wrecking service with the M-16 truck, to Shelton, Conn., on Monday, February 17, 1964.

5. That accordingly the New York, New Haven & Hartford Railroad Co., be ordered to additionally compensate the employees, named supra, in the following amounts:

1. For Tuesday, December 17, 1963, L. Altieri, J. Granfield and E. Hunt, each, in the amount of eight (8) hours and forty (40) minutes at time and one-half.

2. For Tuesday, December 31, 1963, L. Altieri, H. Fay and J. Granfield, each, in the amount of six (6) hours and thirty (30) minutes at time and one-half.

3. For Monday, January 6, 1964, L. Altieri, H. Fay and E. Hunt, each, in the amount of eleven (11) hours at time and one-half.

4. For Monday, February 17, 1964, E. Hunt four (4) hours and thirty (30) minutes at time and one-half.

EMPLOYEES' STATEMENT OF FACTS: The New York, New Haven & Hartford Railroad Co., hereinafter referred to as the carrier, maintains a wrecking outfit at its New Haven, Conn., car yard facility, where L. Altieri, H. Fay, J. Granfield and E. Hunt, hereinafter referred to as the claimants, are employes as carmen, car inspectors, and are regularly assigned members of the crew of the wrecking outfit.

The carrier also maintains a truck, M-16, equipped with air jacks, hand jacks, replacers, blocking, chains and other tools necessary for the performance of rerailling duties, which the carrier presses into rerailling and wrecking service, when the carrier deems the M-16 truck can cover the rerailling and/or wrecking services to be performed. On Tuesday, December 17, 1963 a derailment occurred at Shelton, Conn., approximately sixteen (16) miles from New Haven, Conn., for which the M-16 truck, manned by carmen T. Pinsoneault, T. Tully and S. Aldrich, who are not members of the wrecking crew, were called for this derailment at 8:00 a.m. and were released at 4:40 p.m., a total of eight (8) hours and forty (40) minutes.

The claimants were available and were not called.

On Tuesday, December 31, 1963, a derailment occurred at Monroe, Conn., approximately nineteen (19) miles from New Haven, Conn., for which the M-16 truck, manned by carmen T. Pinsoneault, T. Tully and S. Aldrich, who are not members of the wrecking crew, was called for this derailment at 9:30 a.m. and were released at 4:00 p.m., a total of six hours and thirty (30) minutes.

The claimants were available and were not called.

On Monday, January 6, 1964, a derailment occurred at Shelton, Conn., approximately sixteen (16) miles from New Haven, Conn., for which the M-16 truck, manned by J. Granfield, a regularly assigned member of the wrecking crew and carmen T. Pinsoneault, T. Tully and S. Aldrich, who are not members of the wrecking crew, was called at 8:00 a.m. and were released at 7:00 p.m., a total of eleven (11) hours.

The claimants were available and were not called.

On Monday, February 17, 1964, a derailment occurred at Shelton, Conn., approximately sixteen (16) miles from New Haven, Conn., for which the M-16 truck, manned by carmen from the rip track, who are not members of the wrecking crew, was called at 9:00 a.m. and were released at 1:30 p.m., a total of four (4) hours and thirty (30) minutes.

The claimants were available and were not called.

This dispute has been handled with all of the carrier's officers designated to handle such disputes, up to and including the highest officer, all of whom having refused to settle the dispute.

privilege of a demand right necessarily carries with it the obligation to perform the work.

Carrier has shown that on the basis of long-standing practice over a period of many years, by decisions in similar claims on this Property in recent years which have been accepted by the employes, and by awards of this board, it is not necessary that regular members of the wreck crew be used when the wreck train is not required for rerailing.

The claims should be denied.

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.

The basis of this dispute is Carrier's failure to call the regularly assigned wrecking crew to clear up a number of derailments. In each instance, the Carrier sent several carmen with an M-16 truck to accomplish the rerailing work involved.

Petitioner contends that Carrier thus violated Rule 111 which reads as follows:

"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.

This rule is agreed to with the understanding that the regularly assigned crew will accompany the wrecker when sent outside of yard limits for the purpose of clearing main line wreck or derailment but that the use of regular outfit for retruck and miscellaneous purposes other than clearing wrecks may be accomplished with less than the regularly assigned crew and full equipment as long as there is no interference with the main line operations."

The second paragraph of Rule 111 is a specific provision that, as in the case of other agreements, gives wrecking crews all derailment work only when a "wrecker" is called. See Awards 1482, 1757, 1763 and 4821. Ordinarily a "wrecker" includes a derrick and tool car and where familiar "wrecker" equipment is not used, it is incumbent upon Petitioner, as an essential part of its case, to present timely facts, and not mere contentions or assumption, to show that the apparatus utilized possesses the attributes of a "wrecker". We have no valid basis on the present record for finding that an M-16 truck constitutes a "wrecker" and is anything more than vehicle used for transportation.

The claim must therefore be denied.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 31st day of January, 1967.

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