

Award No. 5194
Docket No. 4882
2-GM&O-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the carrier improperly augmented the Jackson, Tenn., wrecking crew with Bridge and Building Construction employees to perform Carmen's work at a derailment at Glen, Miss., December 30, 1963 through January 5, 1964.

2. That accordingly, the carrier be ordered to additionally compensate the following named Carmen at the overtime rate for the number of hours indicated on dates shown below.

December 30, 1963 - 7:00 A. M. to 10:30 P. M., plus 2½ hours' travel time for J. W. Mount, W. L. Herndon, L. E. Jones, W. L. Stewart and F. B. Gowan.

December 31, 1963 - 6:30 A. M. to 9:30 P. M., plus 5 hours' travel time for W. L. Herndon, E. L. Wyatt, K. E. Smith, J. V. Stewart and E. L. Emerson.

January 1, 1964 - 6:30 A. M. to 3:10 P. M., plus 5 hours' travel time for A. M. Smith, R. E. Stewart, L. E. Jones, W. L. Stewart and C. A. Graves.

January 2, 1964 - 7:00 A. M. to 8:30 P. M., plus 5 hours' travel time for J. H. Sipes, W. F. Dailey, J. W. Turner, W. C. Drews and E. L. Emerson.

January 3, 1964 - 6:30 A. M. to 12:00 midnight, plus 5 hours' travel time for W. F. Dailey, H. G. Mount, J. W. Mount, J. W. Turner and J. H. Sipes.

January 4, 1964 - 7:00 A. M. to 10:30 P. M., plus 5 hours' travel time for W. C. Drews, C. A. Graves, A. M. Smith, W. M. Bridges and T. B. Pounds.

January 5, 1964 - 7:00 A. M. to 5:40 P. M., plus 2½ hours' travel time for T. B. Pounds and W. M. Bridges.

EMPLOYEES' STATEMENT OF FACTS: The Carmen listed above, hereinafter referred to as the Clamants, are regularly assigned at Jackson, Tenn., by the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the Carrier.

The morning of December 30, 1963, several cars of one of the Carrier's freight trains became derailed and wrecked at Glen, Miss., which is some 115 miles south of Jackson, Tenn. The Jackson Wrecking Outfit was dispatched to the scene along with the Meridian, Miss., Wrecking Outfit to clear up the wreck.

On the arrival of the Jackson Crew at the scene of the derailment, Foreman Jones and four other members of his Bridge and Building Construction employees were assigned with members of the Jackson Wrecking Crew to handle cables, blocks, outrigging and make hitches. They worked with the wrecking crew, performing the same duties up through the time the crew was relieved for rest at 10:30 P. M., January 4, 1964. Two Section Laborers were assigned to assist the Wrecking Crew on January 5, 1964. Attached hereto and identified as Employees' Exhibit A is statement from members of the Jackson Wrecking Crew confirming the above facts.

This dispute has been handled with Carrier officials up to and including the highest officer so designated by the Company, with the result he has declined to adjust it.

The agreement effective January 1941, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: Rule 509 of the current agreement reads in pertinent part:

"(509) WRECKING CREWS:

Regularly assigned wrecking crews, not including engineers, will be composed of carmen, where sufficient men are available, and will be paid for such service under Rule 10; meals and lodging will be provided by company while crews are on duty in wrecking service.

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."

Rule 33, "Assignment of Work," reads in part:

"None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, . . ."

It is submitted that under the provisions of the two rules quoted, it was improper to assign Bridge and Building Construction Employees to augment

laborers in clearing the wreck at Glen and repairing the track and roadbed are the exclusive duties of carmen.

Carrier urges that the claims be denied.

(Exhibits not reproduced.)

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 question was whether a wrecking crew at Jackson, Tenn. aiding building and construction employes to perform carmen's work, on December 30, 1963, through January 5, 1964, was a violation of the Agreement.

The claimants states that under the agreement the carrier should not augment the wrecking crew with Bridge and Building construction employes to perform carmen's work at a derailment at Glen, Miss. on December 30, 1963, through January 5, 1964. The wrecking crew, the union says was augmented with Bridge and Building construction employes to perform the work at Glen, Miss. on December 30, 1963 through January 5, 1964.

The claimants were regularly assigned at Jackson, Tenn. by the carrier.

The said carmen will be referred to hereafter as claimants.

Maintenance of way employes do various things at wrecks. The duties performed here, by maintenance of way employes were not the exclusive duties of carmen. The duties they performed were the usual duties of maintenance of way employes which they had a right to perform.

AWARD

Claim denied.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1967.

LABOR MEMBERS' DISSENT TO AWARD NO. 5196

The second paragraph of the Employes' Statement of Facts reads as follows:

"When the Carrier elected to work the Coal Hump overtime, instead of putting on a third shift, it was agreed upon locally, when

the Hump worked in excess of two and one-half (2½) hours the pit inspectors would be called from the Carmen's Overtime Board. In Carrier's Master Mechanic L. S. Fidler's letter of May 4, 1964; addressed to Local Chairman G. C. Watkins he states, 'There was no such understanding or agreement between the Local Chairman and the General Foreman at Russell Terminal.' However, he did admit it had been the past practice to call men from the Carmen's Overtime Board when the Hump worked in excess of two and one-half (2½) hours."

On reading the Employees' Statement of Facts quoted above it will be noted that it was the carrier who denied that there was any such an agreement. In the findings of the majority quoted below they say it was the Organization that denied there was any such practice; that there was such an understanding.

"According to past practice, in calling men from the Carmen's Overtime Board when the hump worked in excess of 2½ hours, which practice the Organization at first denied but later stated that there was such an understanding * * *."

The seventh paragraph of the Carrier's Position reads as follows:

"In denying this claim * * *, the initial officer denied that any such agreement had been made with the Organization as to the manner in which Carman would be worked on an overtime basis on the local hump and set forth the practice which had been followed * * *."

It will be noted from the quote above from the Carrier's Position that the initial officer denied there was any such agreement that had been made with the Organization. It will be noted from the quote below from the findings of the majority they say the Organization denied that there was such an agreement.

"The Organization denied that there was such an agreement but it admitted there had been a past practice to call men from the Carmen's Overtime Board when the hump worked in excess of two and one-half hours * * *."

The twelfth paragraph of the Carrier's Statement of Facts reads as follows:

"The humping operation resumed and continued without further interruption. However, the trouble with unit 5547 had caused a delay of more than an hour, resulting in the inspector remaining on duty for 2 hours and 55 minutes beyond the close of second shift * * *."

It will be noted in the quote above from the Carrier's Statement of Facts they admitted the inspector worked 2 hours and 55 minutes beyond the close of second shift. It will be noted in the quote below from the findings of the majority they say the inspector stayed on until 11:00 P. M., his quitting time and left; then state that the carrier did not violate the agreement by not assigning overtime work which was not needed.

"The reason the carman was not worked the 2½ hours was due to the fact that at midnight trouble developed on the locomotive unit. Mechanics were called in to see if they could repair the unit; but they could not do so. Therefore, the inspector only stayed on until 11:00 P. M. his quitting time and left. Accordingly the Carrier did not violate the agreement by not assigning overtime work which was not needed."

The foregoing shows the discrepancies indulged in by the majority in arriving at their conclusions in Award 5196. We, the Labor Members, dissent.

The same confused and extravagant findings are used to deny Awards 5193, 5194, 5197, 5198, 5199 and 5200 and we therefore likewise dissent to these awards.

Oren Wertz
D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger