

Award No. 5306

Docket No. 5086

2-FW&D-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. 140, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

FORT WORTH AND DENVER RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling Agreement on November 28, 1964, when they composed a wrecking crew of four or more section laborers, at Lubbock, Texas, for the purpose of rerailing B.M. 77260 and N.Y.C. 177924 that had previously been derailed in the Lubbock yard.

2. That accordingly, the Carrier be ordered to compensate E. L. Dill, R. H. Goundie, R. D. Rodgers and R. T. Hall, who are members of the assigned wrecking crew at Childress, Texas, and who were available at the time the section laborers were used to perform the work, a total of eight hours each at the applicable time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The Fort Worth and Denver Railway Company, hereinafter called the Carrier, maintains a wrecking crew headquartered at Childress, Texas. In addition the Carrier maintains a car repair Department at Childress where carmen E. L. Dill, R. H. Goundie, R. D. Rodgers and R. T. Hall, hereinafter called the claimants are employed with assigned hours 8:00 A.M. to 12:00 noon and 1:00 P.M. to 5:00 P.M. with Saturday and Sunday as rest days. The Claimants are members of the regularly assigned crew. Two cars numbered B. M. 77260 and NYC 177924 were derailed and turned over in Carrier yards at Lubbock, Texas.

The Carrier alerted the Claimants (members of the wrecking crew) for this wrecking service on November 28, 1964 but instead of using them, the Carrier recruited a crew of Section laborers, tools and two winch trucks and called them to replace the trucks under the cars and rerailed the cars.

Because of this violation the claimants filed a claim for 8 hours pay each. The local supervisors denied the claim and on April 13, 1965, I appealed to Mr. L. K. Hall, Assistant to General Manager. A copy of my appeal letter is attached and identified as Exhibit A.

(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 were given due notice of hearing thereon.

The claim is that Carrier violated the applicable Agreement when it used section laborers instead of the Claimants, members of the regularly assigned wrecking crew headquartered at Childress, Texas, to rerail two cars in its Lubbock, Texas, yards.

In interpreting rules substantially similar to these concerned here, this Board has consistently ruled that carmen do not have the exclusive right to rerail cars unless a wrecking outfit is called. See Awards 2208, 3257, 4682 and 4821. There is no contention or proof that a wrecking outfit was used or that the two winch trucks hired locally to assist in the rerailment were the equivalent of a wrecking outfit. Carrier consequently was under no obligation to send Claimants some 140 miles to Lubbock to perform the rerailing work. The fact that Claimants were alerted for two hours and then not assigned the work does not affect the situation. Award 3831.

Since there is no specific evidence that the section men actually made repairs to the cars or otherwise performed Carmen's work, the claim must 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 24th day of October 1967.