

Award No. 5466

Docket No. 5167

2-MP-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That on Thursday, June 17, 1965, Diesel Engine No. 921 was derailed at Round Rock, Texas, and the Missouri Pacific Railroad Company violated the controlling agreement by using other than carmen to augment the wrecking force.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman R. D. Miller and Carman E. Resendez, regular assigned members of the wrecking crew, in the amount of twenty-five hours (25') each at the punitive rate for June 17th and 18th, 1965, account they were available and should have been called.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, maintains a large transportation yard, diesel shop, passenger yard and spot repair track at San Antonio, Texas. They also maintain a wrecking derrick and regularly assigned wrecking crew consisting of wrecking Engineer J. J. Janavaras, Carman W. R. Garner, D. C. Wilson, J. P. Falvey, E. Resendez and R. D. Miller. All positions on the wrecking crew are bid in and a prime requisite for being a member of the wrecking crew is to be available for call at all times, and each member of the crew must maintain a telephone in their home or have a message where they will be in the event it is necessary to call the wrecking crew.

On Thursday, June 17, 1965, Diesel Engine No. 921 was derailed at Round Rock, Texas, which is located approximately 98 miles northeast of San Antonio, Texas, and on the same date (June 17th) at 10:45 P. M. wrecking crew members J. J. Janavaras, J. P. Falvey, and W. R. Garner were called to Round Rock to rerail this engine. They went to the scene of the wreck in a truck, taking blocks, jacks and wrecking equipment with them, and Carman W. R. Garner was acting as foreman. However, after arriving at

accompany the outfit when wrecking crews are called for wrecks or derailments outside of yard limits. The regularly assigned wrecking crew at San Antonio is composed of carmen in accordance with the rule, and a sufficient number of the regularly assigned crew was present at the derailment. The carmen did perform the skilled work of making the hitches and the other work necessary to rerail the diesel and change out the defective wheel. The rules do not prohibit sectionmen from being used to perform their normal duties. At a scene of a wreck or derailment, sectionmen normally will carry blocks from the outfit car to the point where needed and dig footings for jacks, and perform other manual labor. This work has not been contracted to carmen and is not customarily or traditionally performed by carmen.

For the reasons stated, the Agreement was not violated because the two additional members of the wrecking crew did not accompany the outfit. A sufficient number of the regularly assigned crew was present at the derailment to perform the normal duties of a wrecking crew. This is true even though a machinist and an electrician were sent to the derailment and sectionmen present at the scene were used to perform manual labor. The claim is not supported by Rule 120, relied on by the Employees, and the claim must be denied.

All matters contained herein have been the subject matter of correspondence and/or conference.

(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.

On June 17, 1965, a diesel unit derailed at Round Rock, Texas. Three carmen members of the regularly-assigned wrecking crew were called at 10:45 P.M. at San Antonio to proceed to the derailment site for the purpose of re-railing the unit. Upon arrival, they found a broken wheel on the No. 3 pair which would require the use of the wrecker to change the wheels.

The wrecker was dispatched from San Antonio at 3:00 A.M., June 18, in charge of a Car Foreman. It arrived at the site at 10:30 A.M.

A machinist and electrician were also sent to the derailment site, as well as section forces (trackmen).

The re-railing of the unit was completed at 6:30 P.M., June 18. The wrecker arrived at San Antonio at 4:00 A.M., June 19.

The theory of the claim is that the claimants, who were also regularly assigned members of the wrecking crew, should have been called and used when it was found necessary to send the wrecker to re-rail the unit.

Rule 119 of the controlling agreement reads, in pertinent part, as follows:

"RULE 119. WRECKING CREWS

(a) Regularly assigned wrecking crews will be composed of carmen and helpers, where sufficient men are available, and will be paid for such service under Rule 7, except that the proper officer may select wrecking engineers from any class of mechanics in service giving preference to mechanics employed as carmen. Meals and lodging will be provided by the Company while crews are on duty in wrecking service.

(b) When needed men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification."

Rule 120 of that agreement reads:

"RULE 120.

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. For wrecks or derailments within yard limits, sufficient carmen and helpers will be called to perform the work, if available."

Operating instructions issued by the Carrier and in effect at the time the claim arose provide:

**"SUBJECT: Number and Class of Men Used on Wrecker
When Called Out on Road for Wrecks or
When Used Within Yard Limits.**

1. Relief outfit when being moved to derailments—accidents, and while being used on line of road in this class of service will be accompanied by the following force:

- (a) Wrecking Foreman – who will be in charge.
- (b) Wrecking Engineer,
- (c) Three Carmen,
- (d) Two Carmen Helpers,
- (e) One Laborer.

* * * * *

The weight of the evidence of record establishes that the three carmen required assistance in performing the customary carmen's duties in connection with re-railing a diesel unit, and that the electrician, the machinist, and the section force provided such assistance, in addition to performing work coming within their respective classifications.

Accordingly, the Board finds that Rules 119 and 120 of the agreement were violated, as alleged. Claimants are, therefore, entitled to payment of the compensation they would have earned had they accompanied the wrecker from the time it left San Antonio until its return, less other earnings, if any.

AWARD

Claim sustained to extend shown in Findings.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June, 1968.