

Award No. 5783

Docket No. 5665

2-N&W-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO
(Carmen)**

NORFOLK & WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Agreement was violated when Carrier used others than the regularly assigned crew to perform wrecking service with the Fort Wayne wrecking derrick, with its engineer and its fireman, at Rockfield, Indiana May 30 and 31, 1966.
2. That accordingly the remainder of the crew regularly assigned to the Fort Wayne wrecking outfit should be compensated in the amount equal to that received by the engineer and the fireman assigned thereto.

EMPLOYEE'S STATEMENT OF FACTS: At Fort Wayne, Indiana, the Norfolk and Western Railway Company, hereinafter referred to as the carrier, maintains a wrecking outfit which is manned by a regularly assigned wrecking crew composed of the following:

	<u>Work Days</u>	<u>Days Off</u>
W. H. Becher	7 A.M.— 3:20 P.M.	Saturday & Sunday
W. A. Walburn	7 A.M.— 3:20 P.M.	Saturday & Sunday
D. Brennan	11 P.M.— 7:00 A.M.	Saturday & Sunday
R. Keeley	7 A.M.— 3:20 P.M.	Sunday & Monday
L. Panyard	7 A.M.— 3:20 P.M.	Sunday & Monday
G. Malott	3 P.M.—11:00 P.M. (Mon.) 7 A.M.— 3:20 P.M. (Thurs., Fri., Sat., Sun.)	Tuesday & Wednesday
J. Eichman	7 A.M.— 3:20 P.M.	Wednesday & Thursday
R. Burwell	11 P.M.— 7:00 A.M.	Wednesday & Thursday
C. Burry	7 A.M.— 3:20 P.M. (Fri., Sat., Sun., Mon.) 3 P.M.—11:00 P.M. (Tues.)	Wednesday & Thursday

Prior to 2:00 A.M., Friday, May 27, 1966, there was a train derailment at Rockfield, Indiana. At 2:00 A.M. on this date, the Fort Wayne wrecking outfit was called to service the derailment and the wreck crew was told to be prepared to stay at the derailment site for several days, in order to get the wrecking assignment completed. The Peru wrecking crew was also called and assisted in the derailment, however, while working at the wreck location the Peru derrick became inoperative and was subsequently taken out of

this time that a wrecking outfit sufficient to perform the work was assembled. The entire Peru relief crew, including the derrick engineer were called and used with this outfit. The Ft. Wayne engineer and fireman were used simply because of their familiarity with the derrick. It has been explained previously that the Peru derrick was diesel operated and the Ft. Wayne derrick steam operated.

Under the above circumstances, no rule violation has occurred in this instance and the claim should be denied in its entirety.

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.

A derailment occurred at Rockfield, Indiana, and the Peru, Indiana relief outfit was called at approximately 2:00 P.M. This relief train and crew went to the scene for wrecking purposes, cleared the main line, and returned to Peru all on May 26, 1966. On May 27, 1966, the Peru and Fort Wayne relief trains were dispatched to Rockfield for additional work. On this latter date, the Peru derrick became inoperative, thus necessitating it being sent to Decatur for major repairs. The Fort Wayne relief train was returned to Peru and tied up Friday evening, May 27, 1966. The Fort Wayne crew was transported to Fort Wayne and relieved. On May 31, the Fort Wayne derrick and the Peru wrecking outfit was sent to Rockfield for additional work. Inasmuch as the Peru derrick was diesel operated and the Fort Wayne derrick steam operated, the Fort Wayne engineer and fireman were called along with the entire Peru crew.

A claim was initiated under date of July 16, 1966 as follows:

"... this letter constitutes a time claim on behalf of the Fort Wayne crew at the rate of time and one-half for all time worked by others than ourselves at this particular derailment, as well as the time the wreck train was secured at Peru, Indiana, waiting, and travel time to and from home station as provided for in paragraph 6 of Rule 9,"

The above claim was denied and appealed by the General Chairman. However, in so doing, the claim was stated as follows:

"... I hereby request that the regularly assigned wrecking crew of Fort Wayne, Indiana May 30 and 31, 1966 be compensated the same amount of pay which was paid to the Peru wrecking (ground crew) members and the Fireman and Engineer of the Fort Wayne wrecking crew (from 11:00 P.M., Monday, May 30, 1966 to 3:30 A.M., Tuesday, May 31, 1966), less the amount they were paid at their home station from their regular assignment, if any."

The claim now before us reads:

"That accordingly the remainder of the crew regularly assigned to the Fort Wayne wrecking outfit should be compensated in the amount equal to that received by the engineer and fireman assigned thereto."

From an analysis of the preceding paragraphs, it becomes eminently clear that the claim as originally submitted has been subjected to changes and amendments to such an extent that the claim now before us is at fatal variance with the original. Hence, it has not been handled "in the usual manner" and stands in violation of Article V of the August 21, 1954 Agreement, and Section 3, FIRST (i) of the Railway Labor Act. We will dismiss the claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October, 1969.