



**Award No. 5859**

**Docket No. 5750**

**2-D&RGW-CM- '70**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYES'  
DEPARTMENT, A.F. of L.-C.I.O.  
(Carmen)**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD  
COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That other than carmen were used to operate D8 caterpillar tractor with side boom to lift and rerail cars at McCoy, Colorado on January 22, 1967.
2. That a maintenance of way man operated this D8 caterpillar tractor with side boom in place of the carman who was appointed to the position of wrecker engineer.
3. That the regularly assigned wrecker engineer, Carman M. S. McKinley be compensated seventeen and one-half (17 1/2) hours at straight time rate. The same as the other carmen received that were at the wreck.
4. That the carrier used this D8 caterpillar tractor in place of the regularly assigned wrecker derrick at Denver, Colorado and that they cease and desist from using other than carmen to operate this machine when it is used to repair, rerail, or for clearing wrecked cars from the scene of the wreck.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 claim involved in this dispute was denied by Carrier's highest designated appeals official, the Director of Personnel. on November 6, 1967.

The claim was filed with the National Railroad Adjustment Board on September 4, 1968...over nine months after the claim was finally denied on the property.

For the reasons set forth in Award No. 5858, involving the same parties, the claim is barred from the Board's consideration on the merits.

**A W A R D**

The claim is dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Second Division

**ATTEST: E. A. Killeen**  
**Executive Secretary**

**Dated at Chicago, Illinois, this 12th day of March, 1970.**