

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7664
Docket No. 7486
2-C&O-CM-'78

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
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(Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That the Chesapeake and Ohio Railway Company violated the terms of the Agreement in dispatching the Satinaw, Michigan, wrecker outfit to Flint, Michigan, for wrecker service without the regular assigned crew, and not allowing six (6) members of assigned crew to accompany wrecker on return trip to Saginaw, Michigan.
2. Accordingly, the Chesapeake and Ohio Railway Company compensate the following eight (8) regular assigned wrecking crew members three (3) hours and fifty (50) minutes at time and one half (1½) or five and three quarter hours, for not accompanying the wrecker outfit to Flint, Michigan.

<u>Working No. & Name</u>	<u>Title and Rate of Pay per Hour</u>	<u>Total</u>
1. 2454889- D. Liebknecht- Wreckmaster-	\$6.78	\$38.99
2. 2461039- R. Fresorger - Engineer -	6.72	38.64
3. 2454346- L. Liebknecht- Cook -	6.66	38.20
4. 2454044- D. Heinzman - Groundman -	6.66	38.20
5. 2454295- W. Browne-Asst. Wreckmaster-	6.66	38.20
6. 2454113- W. Kilbourn- Fireman -	6.66	38.20
7. 2454352- E. Falk- Groundman -	6.66	38.20
8. 2454121- F. Stefanovsky- Groundman -	6.66	38.20
Total		\$306.83

3. Accordingly, the Chesapeake and Ohio Railway Company compensate the following six (6) regularly assigned wrecking crew members when they were not permitted to accompany the wrecker outfit on their return trip to Saginaw, Michigan.

<u>Working No. & Name</u>	<u>Title & Rate of Pay per Hour</u>	<u>Total</u>
1. 2454889- D. Liebknecht- Wreckmaster-	\$6.78	\$101.70
2. 2461039- R. Fresorger- Engineer -	6.72	100.80
3. 2454044- D. Heinzman - Groundman -	6.66	99.90
4. 2454295- W. Browne-Asst. Wreckmaster-	6.66	99.90
5. 2454352- E. Falk- Groundman -	6.66	99.90
6. 2454121- F. Stefanovsky- Groundman -	6.66	99.90
Total		\$602.10

Findings:

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

The carrier or carrier 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.

Between midnight and 1:00 a.m. on March 12, 1976, the Wreckmaster at Saginaw, Michigan, received an official call from the Dispatcher alerting him to a derailment and the need for the Wreck Crew at Flint, Michigan. An estimated 30 minutes later, the Wreckmaster was advised that the call was cancelled. (Claimants received allowance for a call -- two hours and forty minutes at time and one-half rate of pay). After cancelling the call, the Carrier moved the derrick and tank tender from their berths and dispatched them on to the site of the derailment, some 39 miles away. Upon their arrival for their regular assignments (as carmen, Monday - Friday, 7:30 a.m. - 4:00 p.m.) that morning, the Wreck Crew was sent to the scene of the derailment with the remainder of the Wreck Outfit. The crew cleared the derailment later that day (March 12). In the morning of March 13, 1976, the Carrier returned the crew to Saginaw by taxicab, except for two crew members (the cook and fireman) who were retained to accompany the Wreck Outfit back to Saginaw in order to protect the integrity of the equipment from weather conditions.

The specific rule cited in this claim is Rule 130 - Wrecking Crews:

"When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

The Organization contends that the language of the Rule and established past practice on the property support the position that the Wreck Crew is to accompany the wreck equipment to and from the wreck site. It cites prior Awards that support the claim that the word "Outfit" in the Rule is not necessarily limited to the entire consist of cars and equipment involved in the rerailment activities. Thus, according to the Organization, when the Carrier determined it necessary to dispatch the derrick and tank tender to the wreck site, it was obliged to call the Crew out as well. It points to the potential adverse effect of weather on such equipment, if for no other reason. Likewise, the Organization contands past practice supports its claim that the entire Crew should have accompanied the wreck equipment on its return to Saginaw.

The Carrier contends that a piece of the wreck equipment does not comprise the Outfit as a whole, that the crew was dispatched properly with the bulk of the Outfit -- particularly those units which would afford the crew an opportunity to make the trip in reasonable comfort, and that under any circumstances the Rule does not provide for the Crew to accompany the Outfit on the return trip. In addition, the Carrier argues that the punitive rate is inappropriate.

We find that past Awards, as applied to the circumstances cited in this case support the Organization's claim that the Crew callout should have been concurrent with the Carrier's decision to move the derrick and tank tender. The various prior decisions sufficiently establish that the derrick is an essential part of the Outfit and the Carrier clearly made a conscious second judgment to cancel the Crew call and, instead to send the derrick and tank tender forward. Had the initial call been implemented, it would have been fulfilled at the overtime rate. We find the same to apply here. Insofar as the return trip to Saginaw is concerned, the Rule does not offer the same clear interpretation. It is thus incumbent upon the Organization to show that established past practice has been that the Crew so accompany the equipment; this has not been accomplished on the record.

A W A R D

Claim No. 1 is upheld in that the Carrier violated the Agreement when it dispatched part of the Wreck Outfit to the wreck site without the Crew.

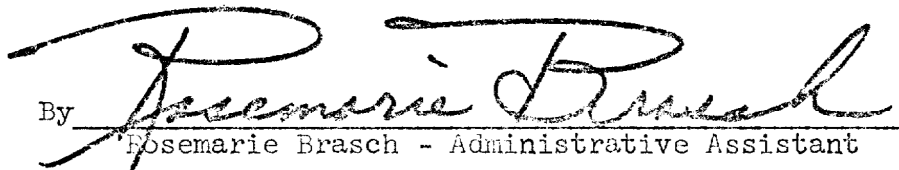
Claim No. 2 is upheld as submitted.

Claim No. 3 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of August, 1978.