

Award No. 827

Docket No. 740

2-DL&W-CM-'42

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 78, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: (A) That the carrier on May 15, 1941, at Secaucus Roundhouse coal chute, N. J., violated the last paragraph of Rule 102, by assigning Track Foreman Joe Chill, his gang of several men, the yardmaster, the roundhouse foreman, a machinist and his helper in lieu of only one carman and his helper to reraill Engine No. 1637.

(B) That Carmen A. Wiczoreck, H. Macdona, R. Frint, and J. Karwell, be compensated for a call of four (4) hours each under the fourth paragraph of Rule 4, at 79 cents per hour for the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: Carmen A. Wiczoreck, H. Macdona, R. Frint and J. Karwell, are regularly employed by the carrier from 10:20 P. M. to 6:20 A. M. in the train yard at Secaucus, N. J. The carrier also regularly employs carmen on the repair track which is a distance of approximately 200 feet from the coal chute where engine 1637 was derailed. These carmen on the repair track commence work at 6:20 A. M.

On May 15, 1941 at 6:55 A. M. engine 1637 was derailed at the said coal chute.

The carrier assigned Track Foreman Joe Chill, his gang of several men, the yard master, the roundhouse foreman, a machinist and his helper, and only one carman and his helper to reraill said engine 1637.

Both the claimants and carmen on the repair track were available to handle the said derailment.

POSITION OF EMPLOYES: The employees contend that the carrier violated both Rules 27 and 102 of the current agreement, by the assignment of employees other than carmen to reraill engine 1637.

Rule 27 reads in part as follows:

"None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft."

Carmen's Special Rule, 102 in part reads:—

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

Secondly, this was a minor derailment and the services of a wrecking crew were not necessary, Docket No. 434, Award No. 425, Second Division. The employees evidently agree that they could not substantiate a claim on behalf of a wrecking crew for it will be noted under the statement of facts that such a claim was presented and progressed to the superintendent of the car department but was withdrawn.

Thirdly, this claim was not presented within the ten day provision of Rule 30 of the agreement. Having failed to comply with such rule the employees are precluded from prosecuting their claim.

Fourthly, the carmen for whom the claim is presented were not available. They had completed their tour of duty and the railroad company had no actual knowledge as to their respective whereabouts. They had no telephones and the railroad company had no means of getting word to these four men.

Lastly, the railroad company followed past practice. The tracks had to be cleared and the roundhouse force consisting of the enginehouse foreman and four members of the roundhouse crew (a carman, a carman's helper, a machinist and a machinist's helper) did the rerailing, using rerailing frogs. The track foreman and his gang, as shown in the carrier's statement of facts, in order to protect the track, did assist in obtaining blocks and spiking down the replacers. They also repaired the track. The procedure followed in rerailing engine 1637 did not violate any rule of the agreement.

For the reasons above stated, this claim should be declined and the railroad company's position is upheld by Award 425 of this Division.

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.

The parties to said dispute were given due notice of hearing thereon.

The evidence of record supports the conclusion that the carrier ignored and violated the provision of Rule 102 which reads: "For wrecks and derailments within yard limits, sufficient carmen will be called to perform the work."

The record does not establish, however, that four additional carmen were needed for this work, or that the particular carmen on whose behalf the claim was submitted were available at the time of the derailment to perform this work.

AWARD

Paragraph A of the claim sustained.

Paragraph B of claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1942.