

**Award No. 878**

**Docket No. 817**

**2-DL&W-CM-'42**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee H. B. Rudolph 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 violated the controlling agreement and Rule 27, 101 and 102 thereof, by the substitution for carmen comprising the Elmira wreck crew other than carmen, to complete clearing up the cars wrecked at Apalachin, N. Y., on January 4, 1942.

(b) That the Elmira assigned wreck crew, in consideration of the aforesaid violation, be compensated under Rule 7 from 5:00 A. M. to 5:08 P. M. on January 4, 1942, less the amount paid for within the spread of said hours.

**EMPLOYES' STATEMENT OF FACTS:** The carrier maintains a wrecking outfit and crew at Elmira, New York. The crew is composed of five carmen regularly assigned thereto.

This wreck crew with the wrecking outfit, on January 2, 1942, was called and assigned to Apalachin, New York where a wreck involving eighteen cars occurred. This crew was on duty from 2:40 A. M. to 7:00 P. M., January 2, at which time said crew was released for the night.

On January 3 at 5:00 A. M. this crew was called to resume said wreck assignment and continued at work on the wreck until 4:00 A. M. January 4, at which time the crew was released and ordered to Elmira on Passenger Train Second No. 7, which arrived there at 5:00 A. M.

The clearing up of this wreck was not completed by the Elmira wreck crew, but which was completed by Foreman Leo McNamara and five other men. On January 4 at 6:00 A. M., this gang of men left Elmira for the scene of wreck, cleared up the wreck and returned to Elmira on Train No. 3 which arrived at 5:08 P. M.

The equipment of Foreman McNamara and his gang consists of a locomotive crane and other machinery that is used to repair the road bed. Elmira is this gang's headquarters.

It is forty-three miles from Elmira to Apalachin, New York.

**POSITION OF EMPLOYES:** The employes contend that the carrier violated Rules 27, 101 and 102 of the current agreement by assignment of employes other than carmen to clean up wreck at Apalachin, New York, on January 4, 1942.

cars PFE 52223 and NKP 97582 and other trucks which were destroyed and loaded the same into cars, the scrap and trucks having previously been removed from the roadbed by the relief outfits and crews.

In handling this claim on the property the employes contended that all work performed by the roadway department belonged to the relief train outfits.

**POSITION OF CARRIER:** The carrier did not violate Rules 27, 101 and 102 of the agreement of November 1, 1935, as contended by the employes.

Rule 27 merely states that none but mechanics or apprentices regularly employed as such shall do mechanics' work.

Rule 101 merely states that regularly assigned wrecking crews, including engineers, will be composed of carmen.

Rule 102 merely states that 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.

In handling this case on the property and in presenting it to this Board the employes do not maintain that an insufficient number of the regularly assigned crew accompanied the respective relief outfits. The employes have no quarrel with the composition of the wrecking crews of Hampton, Elmira and Binghamton who cleared up this wreck. The employes do not maintain and cannot maintain that other than carmen composed the respective relief outfits or assisted in any way in clearing the wreck. The carmen who accompanied the relief trains performed all the work in connection with clearing the tracks and other related work. The only work which the roadway department men did was to burn cars NKP 97582 and PFE 52223 and pick up the scrap therefrom and damaged trucks and other debris and load the same into cars. By no stretch of the imagination could this be classified as carmen's work under Rule 98 of the agreement of November 1, 1935. The railroad company therefore contends that the Board should dismiss the claim.

The railroad company requests the right to join with the employes in the oral hearing which the employes have requested in this case and the right to answer by supplemental submission any point or argument presented by petitioner in its ex parte submission which have not been covered by this submission.

**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.

This dispute centers around the work of cutting, dismantling and loading frames to cars P.F.E. 52223 and N.K.P. 79582, and loading ten trucks following a wreck. The question presented is whether this work was properly the work of carmen composing a wrecking crew or whether it was the work of a roadway gang.

Rule 98 provides that, in addition to other designated work, carmen's work shall consist of, "all other work generally recognized as carmen's work." There is inherent in the work of a wrecking crew certain work generally recognized as carmen's work. This is acknowledged in the requirement that wrecking crews will be composed of carmen, contained in Rule 101.

This fact was also acknowledged by this Division in its Award 424. Under the record as presented we believe the work here involved must be held to be work generally recognized as carmen's work when composing a wrecking crew, unless it amounted to simply cleaning up scrap and debris following a wreck, as contended by the carrier. We are of the opinion that more was involved in this work than cleaning up scrap and debris. The material was all sent to the shops at Scranton and the major portion of it was placed back in use. This work was a step in the process of reclaiming the two frames and ten trucks for future use.

#### AWARD

- (a) Claim sustained.
- (b) Sustained to the extent that additional time would have been required of the wrecking crew had it performed the work.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 20th day of November, 1942.