

Award No. 975

Docket No. 903

2-Wab.-CM-'43

**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. 13, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(a) That the carrier violated the controlling agreement by using other than the Decatur regular assigned wrecking crew on January 28, 1943.

(b) That in consideration of the aforesaid violation each carman regularly assigned to the Decatur wrecking crew be additionally compensated on January 28, 1943, at time and one-half from 4:00 A. M. to 7:00 A. M. and from 3:30 P. M. to 9:40 P. M.

EMPLOYES' STATEMENT OF FACTS: The carrier maintains a wrecking outfit and a regularly assigned wrecking crew at Decatur, Illinois. This crew is composed of:

William Goodman	carman
Glen Pilcher	carman
George F. Haupt	carman
Lloyd Clary	carman
J. E. Myers.....	carman
Nels Myers	carman
Aldine Spitzer	carman
William Goller	carman

whose regularly assigned hours are from 7:00 A. M. to 12:00 noon and 12:30 P. M. to 3:30 P. M.

Each of the above-mentioned employees worked his regular shift on January 28, 1943.

On January 28, 1943, the wrecker foreman, W. N. Price, took Laborer Earl Walker in his automobile and left Decatur at 4:00 A. M. and went to Bowen, Illinois. At about 6:30 A. M., Robert Parker, machinist at Bluffs, Illinois, was called by Foreman Hausbach at Bluffs, Illinois. Mr. Parker built a fire in derrick and had steam up when derrick arrived at Bowen, Illinois, at about 9:00 A. M.

Robert Parker is not regularly employed by the carrier but runs a garage at Bluffs, Illinois, and was not employed by the carrier at the time called for wreck service January 28, 1943.

Carman J. E. Williamson and Carman G. H. Becky, regularly employed at Bluffs, Illinois, were called to assist in picking up cars 46510, 80372, and 80597. Laborer Earl Walker was used as derrick engineer. Robert Parker, machinist and garage mechanic, fired the derrick.

point of the accident, one of the cars was rerailed and the other three cars turned over on their side in clear of the main track, remaining in that position until January 28, 1943, when a work train was ordered out of Bluffs with the locomotive crane from the Decatur car shop and the Bluffs tool car, accompanied by the carmen assigned at Bluffs, for the purpose of picking up the three derailed cars.

The carmen regularly assigned on the wrecking crew are assigned at the Decatur car shop from 7:00 A. M. to 3:30 P. M., with thirty minutes for lunch, and lost no time on the date in question as a result of the carrier using the Bluffs wrecking crew to rerail three cars at the point of the accident as the carmen for whom the alleged claim is presented worked their regular assignment on January 28, 1943, at the Decatur car shop, for which they were paid eight hours at the carmen's rate.

Furthermore, the Decatur wrecking derrick weighing 255,300 pounds was entirely too heavy to be operated across the Meredosia Bridge, spanning the Illinois River six miles west of Bluffs, as the heaviest locomotive that can be operated over that bridge weighs but 128,500 pounds, while locomotive crane 3058 weighed but 122,100 pounds.

Regardless of any question in that connection, however, there is no rule in the agreement covering shop crafts that restricts to any degree the right of the carrier to exercise its own judgment as to whether or not a wrecker is required in clearing up an accident, and in that connection attention of the Board is directed to that part of Rule 120 reading:

"This shall not be construed to prevent train crews or other available employes from rerailing cars or locomotives, when wrecker is not required." (Emphasis supplied)

In the case under consideration, wrecker was not required.

The contention of the petitioner that the employes involved in this alleged dispute should be allowed additional compensation as set up in its statement of claim is without foundation under the rules of the Schedule for Shop Crafts; therefore, the submission of this case to the Board by the committee is without question an attempt on their part to change the provisions of the existing agreement in a manner contrary to the provisions of section 6 of the Railway Labor Act; accordingly, the alleged dispute referred to herein is not properly before or subject to a decision by the Board and the contention of the committee should be dismissed and the claim denied.

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 does not, in the circumstances of this proceeding, disclose any violation of the controlling agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1943.