

Award No. 1027

Docket No. 964

2-DL&W-CM-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

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

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

DISPUTE: CLAIM OF EMPLOYEES:

- 1—That on and since August 30, 1943, the carrier has unjustly dealt with its Hampton, Pa., wrecking crew within the expressed provisions of the controlling agreement, when—
 - a. A New York Central wrecking outfit and crew were called and used in wrecking service at Wayland, New York, on August 30, 31 and September 1, 1943, in lieu of calling and using the Hampton wrecking outfit and crew to perform said wrecking service.
 - b. Proper payment to the Hampton wrecking crew for the wrecking service performed by the New York Central wrecking crew at Wayland, was finally declined.
- 2—That the carrier be ordered to properly pay the Hampton wrecking crew, composed of Carmen Frank Esposito, Mike Calabretta, A. Reynolds, C. Chinchillo, Nick Potachnick, Frank Davidson, James Joyce and Carl A. DeStefano, from—
 - a. 6 P. M. August 30 (the time the N. Y. C. crew was called), to 9 P. M. September 1, 1943 (the time the N. Y. C. crew arrived at home point, Corning, New York). Also one (1) hour preparatory time.
 - b. 9 P. M. September 1, traveling from Corning, New York, to 12:30 A. M. September 2, 1943, approximate time the Hampton wreck crew would have arrived at their home station, Hampton yard, and—
 - c. Less the amount earned within the spread of the aforesaid hours at their home station.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains wrecking outfits and wrecking crews at—

- 1—Buffalo, New York. The capacity of the derrick is 100 ton and Buffalo is 84 miles from Wayland, New York.
- 2—Elmira, New York. The capacity of the derrick is 100 ton and Elmira is 63 miles from Wayland, New York.

In view of the foregoing the carrier submits:

1. Agreement rules must be read in the light of the time immemorial custom of railroads to use the most available equipment in the case of a catastrophic passenger train wreck.
2. Under the circumstances disclosed in this record, the Hampton crew was not available in the sense that practical railroad men understand the term.
3. The carrier was not required to leave the remainder of its line improperly protected, from Wayland, New York, to Stroudsburg, Pennsylvania, a distance of 225 miles.
4. The judgment of the carrier in handling the emergency, having regard to all the circumstances, was an operating matter with which this Board will not interfere.
5. The agreement rules do not require that the carrier must use the Hampton derrick crew, particularly under circumstances such as are disclosed in this case. The crew is entitled to wreck service only when the derrick is dispatched.

Accordingly, it is respectfully submitted that the claim should be denied.

All emphasis has been supplied.

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 employees 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 record shows that two wrecking crews and one wrecking derrick of The Delaware, Lackawanna and Western Railroad Company were used and while it is true that a wrecking derrick and crew from the New York Central Railroad was also used there is no proof that the Hampton crew was damaged, therefore, due to the circumstances surrounding this particular case the claim for compensation for the Hampton wrecking crew is denied.

AWARD

Claim denied in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1944.