

Award No. 1039
Docket No. 963
2-FtW&DC-CM-'44

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 140, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)

FORT WORTH AND DENVER CITY RAILWAY COMPANY

THE WICHITA VALLEY RAILWAY COMPANY

Dispute: Claim of Employees: 1. That under the controlling agreement all of the wrecking service performed in connection with the wreck or derailment of two cars near Vernon, Texas, on May 19, 1943, exclusively belonged to carmen regularly employed as such at Childress, Texas.

2. That the carrier damaged carmen when four helpers were assigned to accompany the Childress wreck outfit and wrecking crew to clear this wreck or derailment.

3. That in consideration of all of the aforesaid, the carrier be ordered to additionally compensate Carmen Louis Nicholson, C. M. Hill, H. T. Owens and W. R. Roberts, from 12:30 A. M. to 8:00 A. M., May 19, 1943.

EMPLOYEES' STATEMENT OF FACTS: At Childress, Texas, the carrier maintains a force of approximately 39 carmen, coming within the scope of "other carmen" as provided in Rule 13 (e), also a wrecking outfit and a regularly assigned wrecking crew.

The wrecking outfit consists of a 150-ton derrick; the equipment is composed of dining car and bunk combined, tool car, etc.

Prior to April 1, 1943, or February 25, 1943, the regularly assigned wrecking crew consisted of ten employees—five carmen and five carmen helpers—which is confirmed by Exhibit A, herewith submitted.

Subsequent to April 1, 1943, or on May 19, 1943, the date of the wreck or derailment, the regularly assigned wrecking crew consisted of Carmen J. B. Miles, R. O. Law, Lonnie Elkins, D. V. Keeling and W. W. Vaughn, whose regular shop hours are from 8:00 A. M. to 5:00 P. M.

A wreck or derailment occurred near Vernon, Texas, involving two freight cars, and the regularly assigned wrecking crew with the outfit accompanied by four of the helpers, Pete Miller, S. H. Wrinkle, Tommy Stewart and Reuben Hall, who are included in Exhibit A, proceeded to the scene of the wreck. The wrecker arrived at the wreck at 5:10 A. M., wreck was cleared at 6:10 A. M., outfit and crew returned to Childress at 10:40 A. M., May 19, 1943.

formity with negotiated labor agreement between the shopcraft employees, including carmen, and carrier, dated October 28, 1941, and superseded by similar agreement dated April 8, 1943, covering promotion of regular apprentices, helper-apprentices and helpers to mechanics in the maintenance of equipment department.

POSITION OF CARRIER: The argument of representative of the employees in conference in support of the employees' position was as if to say that the current rule provides that "wrecking crews, including engineers, but not including wreck foreman or wreck master, will be composed of carmen when available" or as if to say that "except wreck foreman or wreck master no one will work in a wrecking crew except carmen when available." That is not the way the rule reads. Such argument disregards entirely the opening words "regularly assigned." The regularly assigned crew in this instance consisted entirely of carmen. It did not include carman helpers. It is true that the carmen had four carman helpers with them. So long as the carrier does not have carman helpers regularly assigned to wrecking crew it fulfills the provisions of the rule. The availability or nonavailability of other and additional carmen, such as the claimants, Nichols and others, is beside the question. Argument of the employees seeks to establish the position that the employees have a voice in determining the number of employees that will constitute the regularly assigned wrecking crew, those subject to call, and that instead of having five carmen in regularly assigned wrecking crew there should be nine regularly assigned carmen. This cannot be found in the rule as it does not anywhere specify anything on the composition of a wrecking crew. This is something that is decided by the management of the carrier. It is the judgment of the maintenance of equipment officers of this carrier that the designation or assignment of five carmen to a wrecking crew on this railway is, in good practice, a sufficient number of carmen.

There is affirmative support for the utilization of the services of carman helpers in paragraph (b) of the current Rule 42 which reads:

"When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification."

One of the changes in practice under the former rule and practice under the current one is that formerly the carrier could and did regularly designate and assign carman helpers to the wrecking crew whereas now when it comes to regular assignment the carman helpers are not amongst those assigned, but that is not to say that the carrier cannot employ them in wrecking crew. Rule 42 (b) tells us that we can.

It is not apparent how the employees reach the conclusion that Messrs. Nichols, Hill, Owen and Roberts are the very persons eligible to the reparation that is sought. Employees are not in a position to know that any one or all of these particular employees would have been engaged for this wrecking service at Vernon on May 19, 1943, if the master mechanic or other supervisory officers in the exercise of their judgment had chosen to increase the number of carmen at the wreck. This leads one to the surmise that the selection of the names of Messrs. Nichols, Hill, Owen and Roberts as claimants must have been at random, and, therefore, has no ground or support.

Claim of Nichols and others is without merit. Carrier requests that the claim and request be denied in full.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Paragraph (a) of Rule 42 relates only to the consist or make up of "regularly assigned wrecking crews." Paragraph (b) of the rule governs this dispute. This paragraph provides: "When needed men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification." Carmen helpers constitute a class, and the record fails to show that the carmen helpers taken on the wrecking crew performed duties other than duties "consistent with their classification," as defined in Rule 84 of the agreement.

This award is not to be construed as meaning that helpers when taken as additional members of wrecking crews may perform wrecking crew work other than carmen helpers' work as defined in Rule 84 of the agreement.

AWARD

Claims 1, 2 and 3 denied as indicated in the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of November, 1944.