

**Award No. 1298**

**Docket No. 1214**

**2-L&N-CM-'49**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. OF L. (Carmen)**

**LOUISVILLE & NASHVILLE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** 1. That the carrier, on the morning of June 16, 1947, improperly under the current agreement augmented the wrecking crew with four section force employees to expedite the rerailment of Locomotive 2117 and Refrigerator Cars EGEX 37103 and MDT 47594.

2. That accordingly, the carrier be ordered to additionally compensate Carmen C. J. Hazelwood, J. R. Lake, J. L. Fields and J. J. Gilchrist from 7 A.M. to 12:30 P.M. in the amount of 5½ hours at the time and one-half rate, on the aforesaid date, for the wrecking service work which said section force employees performed.

**EMPLOYES' STATEMENT OF FACTS:** The carrier maintains a force of carmen, a wrecking outfit and a regularly assigned wrecking crew at Montgomery, Alabama. The regularly assigned crew consists of Carmen G. C. Latham, F. G. Hester, J. R. Lawson, C. C. Wingard, C. Thompson and J. L. Bailey, whose regular assigned hours were from 7 A.M. to 3:30 P.M.

At Montgomery in the North Yard on Track 306, Locomotive 2117 and Refrigerator Cars EGEX 37103 and MDT 47594, were derailed about 5:30 P.M. on June 15, 1947.

The carrier ordered the wrecking outfit and the wrecking crew for 7 A.M. on June 16, 1947. The wrecking outfit, except the diner and two bunk cars, accompanied by the wrecking crew—with the exception of Carman Thompson, who was not available due to sickness—departed for the derailment at 7:20 A.M. and proceeded with the rerailment work, beginning at 7:40 A.M., assisted by section force employees I. Z. Taylor, A. Davis, Dan Jackson and James Wright, who were on hand with instructions to help do the job when the wrecking outfit arrived. This is affirmed by copy of the submitted letter from Local Chairman Bailey to the undersigned, dated March 15, 1948, identified as Exhibit A.

These section force employees worked with the wrecking crew, building riggers, carrying blocks, cables, chains and other material to and from the wrecking outfit supply cars in addition to helping fasten cables and making hitches, until the derailment was cleared at 12:20 P.M. The wrecker returned

pilots, pilot beams, running boards, foot and headlight boards; tender frames and trucks, pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating backing out punches and operating punches and shears, doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machines or removing vats); all other work generally recognized as painter's work under the supervision of the locomotive and car department, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairers, write-up men, locomotive crane engineers; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work."

There is nothing in the foregoing rule restricting the work in question to carmen.

The employes contend that in this case the carrier augmented their wrecking crew by the use of four section laborers. This is not the case. The laborers were not used to perform work of carmen but were simply used to handle heavy materials, which has been the practice for years past. Had additional carmen been required, those for whom claim is made would not have been used. Claimants are assigned car inspectors and wrecking service is protected by carmen on shop track miscellaneous overtime board. Further, the service performed was within bulletined hours of shop track forces and no overtime would have been involved.

In handling on the property, the employes took the position—

"... since the wrecking crew has been reduced by three carmen subsequent to 1937, it is very obvious that there is an insufficient number of carmen regularly assigned to perform the necessary duties of the wrecking crew at Montgomery, Ala."

The wreck in question was within yard limits and a sufficient number of the wrecking crew was used to perform the work. However, as information, reduction in the number of carmen assigned to the wrecker was made in 1941 and this is the first time any protest has been brought to our attention.

**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.

By the specific terms of Rule 106 (a) of the controlling agreement, regularly assigned wrecking crews, excepting the cook, must be composed of carmen. Since the section men in this case were not assigned as additional members of the wrecking crew, the exception provided in Rule 106 (c) has no application.

The substance of Rule 106 (a) is that the wrecking crew shall perform all services incidental, or necessary, to the proper completion of a given task. All the required operations in wrecking service, both simple and complex, subject to the provisions of Rule 106, are, by contract, a part of the carmen's craft. To permit the less important work to be assigned to persons outside of the carmen's ranks is to whittle away the significance and purpose of the rule. Such practice, in fact, would be a breaking-down of a condition agreed

upon in collective bargaining, and established by a recognized rule. It would open the door to other departures from the literal wording of the rule, and invite a result where the exceptions to the rule would become more important than the rule itself.

If the four section force employees had not been present at the site of the derailment, all work would have been performed by the wrecking crew. If the size of the wrecking crew was not sufficient to handle the job, Rule 106 (a) requires the assignment of other carmen. It is concluded, therefore, that the use of the section men in lieu of carmen in the instant case was a violation of Rule 106 (a).

The record is not clear in disclosing either the precise amount of time spent by the section men in assisting the wrecking crew, or the identity of the additional carmen who should have been assigned to such wrecking service. On this account, the case is returned to the parties to enable them to jointly determine the amounts of compensation due, and the persons entitled thereto.

#### AWARD

Claim 1. Sustained.

Claim 2. Remanded for settlement consistent with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1949.