

Award No. 1668

Docket No. 1558

2-LV-CM-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION No. 96, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. (Carmen)**

**LEHIGH VALLEY RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** 1. That under the current agreement the Carrier improperly assigned the Sayre, Pennsylvania wrecking crew and wrecking outfit on wrecking service at about one hundred yards west of Lacyville Passenger Station on July 31, 1951.

2. That accordingly the Carrier be ordered to compensate the Coxton wrecking crew composed of the following Carmen:

T. H. Watson  
F. Kramer  
J. Ackerman  
A. Miller  
L. Schmeig  
W. Reed  
F. Taft  
J. Gannon  
A. Keller  
J. Kohler

in the amount they would have earned if they were called to perform this wrecking service on July 31, 1951.

**EMPLOYES' STATEMENT OF FACTS:** On July 31, 1951, train SJ-2 eastbound at Lacyville, Pennsylvania, passenger station, and approximately 39 miles from Coxton, Pennsylvania, derailed two cars about 7:30 P.M. while setting off cars of train. The Sayre, Pennsylvania, wrecking outfit and wrecking crew were called at 8:00 P.M. July 31, and departed to the scene of this derailment, cleaned up the wreck and returned to their home station, arriving at 11:30 A.M. August 1.

crew performed the work . . ." In this instance, the regularly assigned crew with the exception of the engineer did not accompany the outfit. The award in that case sustained the claim for the difference between what claimants earned and what they would have earned had they accompanied the outfit.

Also, in Award 857 of this Division, the findings and award read:

"The language of the rule of agreement involved contemplates that when the wrecking outfit is used for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. However, none of the regularly assigned crew accompanied the wrecking outfit when dispatched from Binghamton to Syracuse, on the night of September 8, 1941.

The evidence of record shows that the number of carmen located at Syracuse who worked with the Binghamton wrecking outfit equals the number of carmen constituting the Binghamton wrecking crew; therefore it must be conceded that the management considered four carmen were required for service with the wrecking outfit, in addition to the derrick engineer.

There are no limits, prescribed in the agreement, as to where and to what points or divisions the regularly assigned wrecking crew and outfit may be sent when necessary; therefore, the claim of employes should be sustained.

#### Award

The regularly assigned wrecking crew shall be paid the difference between that which they earned and that which they would have earned had they accompanied the wrecking outfit."

The claim submitted in this dispute is clearly an attempt to gain by interpretation and award through this Division a new rule. This is not a function of this Division to perform, but is one that must be a matter of negotiation between the parties. In connection with such a question, the following, in part, was stated in the findings under Award No. 975 of this Division:

"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."

It is the position of the carrier the rules of the schedule agreement, the known practice of the parties to the agreement with respect to the calling and use of wrecking crews evidenced by decision rendered to the general chairman in a previous case in letter dated April 25, 1950, included in this submission, and the precedent of previous review by this Division of similar questions as involved in this dispute, clearly establish the fact that this claim is without foundation or merit, and must accordingly be dismissed and 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.

On July 31, 1951, two cars were derailed about one mile west of the depot at Lacyville, Pennsylvania. The wrecking crew from Sayre, Pennsylvania, was sent to clear the tracks. Claimants are carmen assigned to the Coxton, Pennsylvania, wrecking crew who assert that they should have been called to perform the work.

There is no dispute that claimants held seniority as carmen at Coxton and that by agreement they performed all minor car repairs within prescribed distances from Coxton. For these purposes, Lacyville was within the district assigned to carmen at Coxton. The claim here is that they were entitled to perform the wreck-train work performed by the Sayre wreck crew on the dates in question.

The carrier asserts that it has never restricted itself in the use of wreck trains and crews although it has made agreements with carmen in the respects noted. The carrier asserts that it has been long established practice to use available wreck crews to handle wrecks in the most expedient manner without respect to the their headquarters or location. The organization in effect admits this to be true prior to March 1, 1950, but asserts that on that date an agreement was made that when wrecks occur and a wreck crew is assigned in the seniority district of the point involved, the wreck crew in that seniority district would be used. This agreement, if one was made, does not appear to have been reduced to writing as between the carrier and the organization.

The organization relies upon a written inter-office communication between Mr. J. Davis, Car Department Foreman at Coxton, and Mr. C. L. Draper, the General Engine House Foreman at Coxton. The memorandum was written by Draper to Davis and states in part that "in the future when wrecks occur and we have a wreck crew assigned in the seniority district of the point involved, it will be necessary to use the wreck crew in that seniority district . . ." No such understanding appears to have been executed and delivered to the organization for the purpose of putting it on an agreement status. The carrier asserts that Draper wrote Davis through a misunderstanding with the master mechanic. But in any event, the carrier could have placed such a rule into effect unilaterally without obligating itself contractually to do so. It is clear that this memorandum cannot be given the dignity of any agreement that would support the claim. Consequently the practice of the carrier in using wreck crews without regard to seniority districts has not been restricted and no basis for a claim exists.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1953.