

Award No. 1678

Docket No. 1609

2-L&N-CM-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

LOUISVILLE & NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement other than Carmen were improperly used to augment the regular assigned wrecking crew force at Hurricane, Alabama, between the hours of 12:50 P. M. and 6:50 P. M. on June 5, 1950.

2. That accordingly the Carrier be ordered to compensate Carmen T. E. Fletcher, T. O. Murray, T. S. Evans, J. M. Moulyet, J. V. Perkins, W. G. Akers, J. C. Stewart, G. P. Baldo, C. T. Botter and Nick Calascione at the applicable rates of pay for all time between the hours of 11:50 A. M. and 9:30 P. M. on June 5, 1950.

EMPLOYEES' STATEMENT OF FACTS: On June 5, 1950, the Mobile, Alabama wrecking crew was called and departed the carrier's Sibert shops at 11:50 A. M. for a derailment at Hurricane, Alabama, approximately 14 miles from home station.

The wrecking outfit, together with the regular assigned crew arrived at Hurricane, Alabama, at 12:50 P. M. and immediately began their assignment of rerailling cars, L&N 41615, 41614, 41275, 98807 and ACL 77370. This assignment was completed at 6:50 P. M. and the wrecking outfit departed, arriving at home station at 9:30 P. M. the same date.

At the time of arrival at Hurricane, Alabama, the wrecking crew was immediately augmented with ten section laborers, namely: G. Giles, J. W. Washington, A. L. Hall, T. Rose, Jr., J. W. Coleman, John Biffs, W. Jones, Tom Londe, F. Freeman and Louie Gibbs, Jr., under the supervision of Section Foremen Messrs. Major Nelson and Jim Hammond. These section laborers performed wrecking service throughout the entire operation from 12:50 P. M. to 6:50 P. M., or until the wreck was cleared and the wrecking outfit departed, which is confirmed by statement of wrecking crew members submitted herewith and identified as Exhibits A and B.

The claimants, T. E. Fletcher, T. O. Murray, J. S. Evans, J. M. Moulyet, J. V. Perkins, have regular assigned hours of 7:00 A. M. to 3:30 P. M., Tuesday through Saturday and W. G. Akers, J. C. Stewart, G. P. Baldo, C. T. Botter and Nick Calascione have regular assigned hours 7:00 A. M. to 3:30 P. M., Monday through Friday, all work on shop track and were either on duty

There is no suggestion in this case that the size of the wrecking crew was "not sufficient to handle the job." Quite obviously, the regular wrecking crew could have loaded and unloaded the equipment. The equipment was neither so heavy nor so bulky that all of the wrecking crew working together could not have moved it and additional manpower would not have been required. The wrecking crew, or some of them, could easily have done the work, and their having done so would have extended the time required to complete the Hurricane job by no more than 2 hours. In a letter of May 8, 1951 to the employees about this claim, the carrier said:

"... As you know, section forces are made available at wrecks and derailments to rebuild damaged road bed and tracks. While waiting to perform their work it is natural, and has been the custom for many years, for them to give some assistance to members of wrecking crew in handling blocks and slings between wrecker cars and point where this equipment is used. This is what was done in the instant case, and it is estimated the section men did not consume more than the equivalent of two hours for each wrecker man in assisting in this work. The claim you have made in favor of ten carmen at Sibert is excessive and unreasonable, for even if the assistance had not been rendered by the track forces certainly the wrecking crew would not have been increased, but work would have been taken care of by the regularly assigned crew. Had this been done, the wrecking crew would have required approximately two hours more to complete the job, and in view of Award No. 1298 we are willing to compensate them for this additional time. We do not feel this would be compromising the claim, as you seem to think, but rather it would constitute full payment due as it is 'the precise amount of time spent by the section men in assisting the wrecking crew,' (see last paragraph of 'Findings,' Award 1298)."

The only logical conclusion being that the carrier would not have augmented the wrecking crew but would have worked the regular members about 2 hours more, it follows, therefore, that if any additional payment is due, it is due the regularly assigned wrecking crews.

Since it has been demonstrated that the wrecking crew would have been assigned to do this work and that they could have done it in 2 hours or less, their **actual loss** was not more than 2 hours. Therefore, the carrier's offer to pay them 2 hours was entirely fair and is all that they are entitled to receive.

The carrier submits, on the basis of the foregoing, that applying the test of **actual loss** to this case shows that the members of the wrecking crew are entitled to the money and that the sum they are entitled to is 2 hours pay.

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 carrier concedes that ten section laborers augmented the instant wrecking crew for two hours at the scene of the wreck: The record shows — "*** * *** the carrier is willing to assume that some carmen are entitled to additional pay because of the work done *** * ***".

By specific terms of Rule 107(a) of the controlling agreement, "regularly assigned wrecking crews . . . will be composed of carmen." The carrier concedes that the use of section men in lieu of carmen in the instant case was a violation of the agreement.

Without prejudice to other or future claims, the claimants shall be paid two hours each at the carmen's pro rata rate.

AWARD

Claim 1 sustained.

Claim 2 sustained in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June, 1953.