

**Award No. 1972**

**Docket No. 1824**

**2-IC-CM-'55**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. (Carmen)**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That the Carrier violated the current agreement, particularly Rules 130 and 131 by the improper assignment of two carmen apprentices to wrecking service on January 18, 19 and 20, 1954, at Louisville, Kentucky.
2. That accordingly the Carrier be ordered to pay the following Carmen for eight hours at the time and one-half rate for the dates opposite their names:

|               |              |           |
|---------------|--------------|-----------|
| Wm. Whithorn  | J. A. Beatty | 1-18-1954 |
| F. Beasley    | M. Lyles     | 1-19-1954 |
| W. L. Bouland | R. L. Hicks  | 1-20-1954 |

**EMPLOYES' STATEMENT OF FACTS:** The Illinois Central Railroad, hereinafter referred to as the carrier, maintains a force of carmen and a wrecking outfit with a regularly assigned wrecking crew, composed of carmen at Louisville, Kentucky. There was a derailment within the yard limits at Louisville, Kentucky, on January 18, 1954. The wrecking outfit together with the full wrecking crew worked from 2:00 A. M. to 3:30 P. M. to clear blocked tracks and restore normal operations.

At 7:00 A. M. on January 18, 1954, the wrecking crew was augmented by the assignment of two (2) carmen apprentices who were sent to the scene of the derailment where they assisted the wrecking crew. On January 19, and 20, 1954, part of the wrecking crew together with the two carmen apprentices worked from 7:00 A. M. to 3:30 P. M. to finish clearing the wreck.

The claimants are regularly assigned carmen at Louisville, Kentucky, and were available for this wrecking service. The claimants regular assigned hours of service and work week is as follows:

Claim was filed because the carrier allegedly violated the agreement in using carman apprentices with the wrecking crew.

The agreement with System Federation No. 99, effective April 1, 1935, as amended, is controlling.

**POSITION OF CARRIER:** Carman Apprentice R. B. Stewart (then in the fourth year of his apprenticeship) and Carman Apprentice B. H. Stewart (then in the third year of his apprenticeship) were used during regular working hours at a derailment near Wathens Crossing, within the Louisville Terminal on January 18, 19 and 20, 1954, for the sole purpose of acquiring experience in wrecking service. They did not displace any carman mechanics on the claim dates, and had they not been used, neither claimants nor any other carmen would have been used in their stead. The services of the full wrecking crew was not required on January 19 and 20 because the main line had been cleared and the derrick was in use only to truck empty cars. In order to clear the main line as soon as possible derailed coal cars had been turned over and the contents dumped. After the main line was cleared on January 18, the derrick was used on January 19 and 20 to place trucks on a siding and to place the empty car bodies back on the trucks. For this work a full wrecking crew is not needed. On the latter two days an extra carman was used as a ground man to pass signals in order that the car foreman and ground men could instruct apprentices and prevent any possibility of a personal injury to the apprentices while they were learning the work. Therefore, instead of carmen mechanics losing work by reason of the presence of the apprentices, one additional carman was used on January 19 and 20 who would not have been needed otherwise.

Work with the wrecking crew and derrick is the most dangerous a carman is required to do, even with a fully experienced crew. It has been the practice for several years at Louisville to use apprentices with the derrick within the Louisville Terminal, during regular working hours only, as a means of instructing apprentices in this work under favorable conditions. The need for experienced and qualified men to replace the regular wrecking crew as vacancies occur is clearly evident from the age of the present members of the wrecking crew:

| "Crew Member    | Birth Date | Present Age |
|-----------------|------------|-------------|
| T. J. Morris    | 2- 3-1886  | 68          |
| E. B. Lynch     | 12- 8-1898 | 56          |
| J. G. Wilkerson | 8-10-1888  | 66          |
| F. J. Heissler  | 3- 8-1897  | 57          |
| J. T. Allen     | 10-23-1891 | 63          |
| R. Coyle        | 5-26-1894  | 60"         |

The average age of this wrecking crew is 61.6 years.

Rule 131 of the current ageement reads: "When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work." In the case of this derailment within the limits of the Louisville Terminal sufficient carmen were called to perform the work. Carrier wishes to emphasize that had Carman Apprentices R. B. Stewart and B. H. Stewart not been used at this derailment for training purposes, none of the claimant carmen would have been called and used, because they were not needed.

There has been no violation of the agreement in this case, and claim should be 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 waived right of appearance at hearing thereon.

Carmen and a wrecking outfit, with regularly assigned wrecking crew, were maintained by carrier at Louisville, Ky. On January 18, 1954, a derailment occurred at this point within yard limits. During the day shifts on the three days involved the carrier assigned two Carmen apprentices to the derailment scene, allegedly, for the sole purpose of affording to them experience in wrecking service. Carrier states that they did not displace any Carmen mechanics and if they had not been used, neither claimants or any other Carmen would have been used in their places.

The Organization contends that by so doing the carrier arbitrarily nullified the application of that part of Rule 131, providing:

“ . . . For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work.”

It further points to the absence of any provision for derailment training in Rules 143 and 144 of the Agreement which delineates the division of time on the various classes of work in which apprentices will be given training.

While the carrier's submission reflects apparent, sound reasons for extending this important type of experience to Carmen helper apprentices, authority for the same must result from future collective bargaining between the parties rather than through Board dictate. While it is explainable why no division of time in the apprentice training program is allotted to the irregularly occurring subjects of derailment and wrecks in Rules 143 and 144, we should at least find some mention of the subjects in those rules before escape can be justified from the clear, unambiguous and absolute language of Rule 131.

Carrier relies upon that provision of Rule 43, reading, after referring to the Company:

“ . . . who will also furnish every opportunity possible for the apprentices to secure a complete knowledge of the trade.”

and, Rule 139, which provides, in part, in dealing with the subject of apprentices:

“ . . . They will be given the opportunity to learn the trade.”

The first-quoted rule provision relates solely to the carrier's responsibility. The latter provision constitutes a general statement of mutual intent but calls for express provision in the Agreement to implement it. To use it to cut across all other rules of the Agreement cannot be justified.

Second Division Awards 759 and 903 are persuasive. The Agreement was violated but pro rata rather than penalty rate is called for.

#### AWARD

Claim sustained but at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1955.