

Award No. 2049

Docket No. 1840

2-GCL-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)

GULF COAST LINES

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement and particularly Rule 114 when it used Section Foreman and eight section men to rerailed Cars L&N 74567 load gravel, SOU 119312 load gravel, MoP 29993 load gravel, SLSF 85088 load gravel and MILW 85983 empty box car with jacks at Vanderbilt, Texas, December 16, 1950; and

2. That the regularly assigned Kingsville wrecking crew members be paid 39 hours each at pro-rata rate as follows: W. Joe Attebery, H. V. Bryan and C. C. Scott at \$1.65½, Wrecker Engineer E. M. Kriegel 39 hours at \$1.72¾, and Wrecker Foreman M. A. Isdale 39 hours at \$1.66¾.

EMPLOYES' STATEMENT OF FACTS: The carrier maintains a wrecking outfit at Kingsville, Texas, the division shop point for the St. L. B. & M. R. R. (one of the Gulf Coast Lines) for use in wrecking service over the division as required. At the time of this derailment, the regularly assigned wrecking crew consisted of the men whose names are listed in the claim of the employees.

At 9:40 P. M., December 12, 1950, the above numbered cars were derailed on No. 2 track as Vanderbilt Yard, with the exception of MILW. 85983, which was derailed on what is called the house track. Section Foreman was called from Laward, a point a few miles away from Vanderbilt, and he came to Vanderbilt with eight section men and they began work of rerailing these cars at 1:30 A. M. December 16. These section men worked from 1:30 A. M. until 10:30 P. M. same date, at which time the last car was rerailed. One of the carmen stationed at Vanderbilt was worked from 4:00 A. M. until 9:00 A. M. December 16—a period of five hours.

Vanderbilt is on the main line between Kingsville and Houston, Texas. The cars derailed at Vanderbilt did not in any way interfere with the normal operations of trains through that point.

The Kingsville wrecker has been used at Vanderbilt and points further from Kingsville than Vanderbilt. The claimants herein were ready, willing

were unlike the rules covering the instant case, the principle is the same in that, as indicated in these awards, the rerailing of rolling equipment has not been contracted to carmen except where they are regularly assigned to wreckers and **when** wreckers are needed and used.

In Award 1763, Referee Carter specifically held that the rerailing of locomotive and cars is not the exclusive work of carmen **when** a wrecker is not called or needed, in the absence of a specific rule to the contrary.

Award 1760 sustained the claim of carmen under a rule the second sentence of which reads as follows:

"For wreck or derailments within yard limits, sufficient carmen will be called to perform the work"

Under that rule, Referee Carter held that carmen had the specific right to re-railing within the mechanical facility. He also held that the mechanical facility was the same as yard limits under that rule. In the findings, the word "Where" was defined which is similar to the word "When" used in both sentences of the employees Rule 114 covered by the instant docket. In view of this fact, Rule 114 was not violated because the wrecking outfit was not called.

There are also many First and Third Division NRAB awards which lend considerable support to the carrier's position. Some of such awards are listed below:

FIRST DIVISION

4173
13150
13710
13711

THIRD DIVISION

4493

Finally this case must stand or fall on Rule 114; that is, if it was violated, naturally the claim will be sustained; if it was not, it will be denied. This being true, your Board will, of necessity, have to render a denial award because of the fact that Rule 114 has no applicability in the instant claim for the reason that the rule is applicable in cases **when** wrecking crews are called. But, as neither the wrecking crew, nor the wrecking outfit was called to perform the work here in question, Rule 114, as above stated, has no applicability and, therefore, it could not have been violated.

In the light of circumstances surrounding this case and previous rulings of your Board, the contention and claim of the employees should be declined.

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 employees 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.

Here, a derailment occurred in the yard at Vanderbilt, Texas. The claimants were members of the regularly assigned wrecking crew at Kingsville, Texas.

The regularly assigned wrecking crew was not called to perform the work of rerailing the cars, nor was the wrecker outfit used. The carrier used section men and a carman from Vanderbilt to perform the work with the use of jacks.

The record does not indicate to this Board that by virtue of rules or by past practice the work of rerailing cars is the exclusive work of the regularly assigned wrecking crew when said crew is not called or when the wrecking outfit or crane is not used. When such conditions exist which require the use of the wrecking outfit, and such is used, the work belongs to members of the regularly assigned crew in accordance with the provisions of Rule 113 and Rule 114.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1956.

DISSENT OF LABOR MEMBERS TO AWARDS 2049 and 2050

The majority correctly recognizes that the performance of wrecking service is governed by Special Rules 113 and 114 of the controlling agreement but erroneously assumes that these rules provide that only under certain conditions must a wrecking crew be used. We dissent from the findings and decision in Awards 2049 and 2050 for the reason that these rules in reality permit only one condition under which employees other than members of a regularly assigned wrecking crew may be used and that is "* * * as additional members of wrecking crews to perform duties consistent with their classification."

Charles E. Goodlin
R. W. Blake
T. E. Losey
Edward W. Wiesner
George Wright