

Award No. 2050

Docket No. 1879

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 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 under the controlling agreement, the Carrier violated the rights to service of the Kingsville, Texas wrecking crew when roadmaster and 12 section men were used to re-rail engine 315 at roundhouse lead at Vanderbilt, Texas, August 11 and August 12, 1951.

2. That the Carrier be ordered to compensate the Kingsville wrecking crew (Carmen E. M. Kriegal, Jack Smith, C. C. Scott, M. A. Isdale, H. V. Bryan, W. Joe Atterbery; Carmen Helpers W. A. Bolzle and Lee Luedecke) from 7:00 P.M. August 11, 1951 until 11:00 A.M. August 12, a total of 16 hours each at the rate of time and one-half.

EMPLOYES' STATEMENT OF FACTS: The carrier maintains a wrecker outfit at Kingsville, Texas, the headquarters of the division on the St. L. B. & M. R. R. (one of the Gulf Coast Lines) for the purpose of handling of wrecks.

In accordance with the provisions of Rule 113, this wrecking outfit has a regularly assigned wrecking crew composed of carmen and helpers. Assigned to this wrecking crew on August 11, 1951, were the following:

M. W. Isdale	—Wrecker Foreman
E. M. Kriegel	—Engineer and Torchman
Jack Smith	—Carmen
C. C. Scott	— “
H. V. Bryan	— “
W. Joe Atterbery	— “
W. A. Bolzle	—Carmen Helper
Lee Luedecke	— “

On August 11, 1951, engine No. 315 was derailed at the roundhouse lead within the yard limits of Vanderbilt, Texas. Roadmaster Mr. King with 12 section men were called from Bay City to rerail this engine. The engine was derailed about 6:40 P.M. August 11, with all drivers, pony trucks and

the composition of the wrecking crew. Rule 114 does not support the contention of the employes, because it does not abrogate the carrier's inherent right to determine in the exercise of its managerial judgment **when** and under what circumstances the wrecker will be used. In the instant case carrier's officers responsible for the rerailing of locomotive No. 315 concluded the services of the Kingsville wrecker were not necessary, and the wrecker was not called nor used. The provisions of the shop crafts agreement do not give to the employes managerial prerogatives.

The Board's attention is directed to the fact that the claim as presented in this case is for payment at the punitive rate although no service was in fact performed by claimants as a result of which claim is made. Assuming, but not conceding, that claimants should have been used, this Division of the Adjustment Board has ruled that time not actually worked cannot be treated at the overtime, or punitive rate, and that under these circumstances payment at the pro rata rate is proper.

In this connection the following is quoted from the findings of your Board in Award 1268:

"We are, however, of the opinion that this claim should be sustained at the pro rata rate only. While it is true that if claimant had performed the work on his day off his rate would have been time and one-half, however, the penalty rate for depriving an employe of work is the pro rata rate of the position."

See also Awards 1269 and 1530.

Many awards of the Third Division have also upheld and maintained the foregoing principle, some of which are—3587, 3955, 5117, 5200, 5249, 5419 and others.

In the light of the facts in this case, the practice on this property, the rules involved as interpreted by the carrier, the practice of the parties and numerous awards of the Second Division, there is no basis for this claim and it should, therefore, 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 were given due notice of hearing thereon.

The instant case involves the same principle as was discussed in our Award No. 2049, (Docket No. 1840).

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**