

Award No. 2694  
Docket No. 2521  
2-L&N-CM-'57

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Thomas C. Begley when the award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (Carmen)**

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the carrier, on the morning of August 21, 1955, augmented the Nashville Terminals wrecking crew to the detriment of Carman P. C. Trollinger, in a manner contrary to the terms of the agreement.

2. That, accordingly, the carrier be ordered to additionally compensate Carman P. C. Trollinger for 157½ hours at time and one-half rate, or a total of \$467.07.

**EMPLOYEES' STATEMENT OF FACTS:** Carman (car inspector) P. C. Trollinger, hereinafter referred to as the claimant, holds a regular assignment with the Louisville and Nashville Railroad Company (Nashville Terminals), hereinafter referred to as the carrier, at Nashville, Tennessee, Friday through Tuesday, 7:00 A.M. to 3:00 P.M.

On the morning of August 21, 1955, the Nashville Terminals wrecking crew was called at 6:30 A.M. for the purpose of clearing a serious wreck at Delrose, Tennessee. The carrier deemed it necessary to augment the wrecking crew by calling four (4) additional carmen, from the miscellaneous overtime board to accompany the wrecking outfit.

On the morning of August 21, 1955, the miscellaneous overtime board stood thus:

W. Green	P. S. Garrett	S. T. Eagin
G. C. Stevens	E. A. Brown	A. B. Combs
I. L. Fuson	P. C. Trollinger	H. E. Gentry
W. H. King	W. P. Fults	M. W. Kelly
A. L. Ingram	C. E. Arbuckle	S. J. Deep

rate account of not having been called with the wrecker when it was dispatched to Delrose, Tennessee, August 21, 1955.

"It is admitted that the local officials, at Radnor, erred in calling Carman Eagin instead of Carman Trollinger. However, when the error was detected, Mr. Trollinger was notified to proceed to the scene of the accident, but he refused to do so.

"We have noted what you have to say with reference to paragraph 18 of the overtime agreement. It is our position that by offering to compensate Trollinger in the amount he would have earned from the time he should have been called until he would have arrived at the wreck had he complied with our instructions, we are acting in accordance with the intent of the agreement. Certainly, it was not intended that anyone would take the arbitrary position that he should be paid for something which he refused to do.

"In these circumstances, we are willing to compensate Trollinger to the extent as set out in the foregoing. We are not, however, willing to compensate him for overtime work which he refused to accept.

Yours truly,

/s/ W. S. Scholl  
Director of Personnel"

Mr. Poteet refused to accept our proposal.

Carrier is of the opinion that in offering to compensate Mr. Trollinger in the manner set out in its letter of January 17, 1956, it has acted in good faith. It is, however, unwilling to compensate Mr. Trollinger for service which he had an opportunity to protect and refused.

In the foregoing circumstances it is carrier's position that the claim is without merit and 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 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 claimant holds a regular assignment with the carrier at Nashville, Tennessee, Friday through Tuesday, 7:00 A.M. to 3:00 P.M. On the morning of August 21, 1955, the Nashville Terminal Wrecking Crew was called at 6:30 A.M. for the purpose of clearing a serious wreck at Delrose, Tennessee, and the carrier deemed it necessary to augment the working crew by calling four additional carmen from the miscellaneous overtime board to accompany the wrecking crew. The carrier in augmenting the wrecking crew called all the men on the list in their respective order, with the exception of the claimant, whom they passed over and called Carman S. T. Eagin, who was the

third crewman below the claimant on the list. Carman Eagin accompanied the wrecking crew on August 21, 1955 and remained with it until its return to the home station on September 4, 1955 at 2:00 A.M.

The employes state that the carrier unjustly deprived the claimant of his rights to perform overtime services and that the carrier violated Paragraph 18 of the overtime agreement.

Carrier states that when it recognized that its representative at Nashville had made an error on August 21 in not calling the claimant to accompany the wrecking crew outfit on that date, on the next day, August 22, 1955, it notified the claimant to proceed to Delrose, Tennessee to accompany the wrecking crew, but that the claimant refused to go to Delrose, and it is the carrier's position that, in refusing this overtime assignment, the claimant nullified any claim he may have had for the entire overtime period from August 21 to 2:00 A.M. September 4. The carrier has offered to compensate the claimant for the amount he would have earned from the time he should have been called, until the time he would have arrived at the wreck if he had complied with the carrier's instructions on August 22.

From the evidence submitted at the hearing, the board finds that there is nothing in the agreement that would preclude the carrier from rectifying a mistake it had made in not calling the claimant for the services required with the wrecking crew at Delrose, Tennessee, and when the claimant refused on August 22 to proceed to Delrose, Tennessee to work with the wrecking crew, he forfeited any claim that he might have had for the entire overtime worked by the wrecking crew and is only entitled to be paid from the time that the wrecking crew was called on August 21 to the time it would have taken him to report to the wrecking crew at Delrose, Tennessee on August 22.

#### AWARD

Claim allowed for time wrecking crew left Nashville, Tennessee on morning of August 21, 1955 at 6:30 A.M., to the time claimant would have reported to wrecking crew at Delrose, Tennessee on August 22, 1955.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1957.