Award No. 2724
Docket No. 2498
2-DSS&A-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 149, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

DULUTH, SOUTH SHORE AND ATLANTIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier unjustly dealt with Wrecking Crew Members George Gingrass, George R. Hill, George Chiconsky, Adlord D. Clement, Arthur Mineau, Leo Grieninger, and Leo J. Thibodeau when they denied them the right to accompany the wrecker to clear up the wreck at Saxon, Wisconsin on May 5 and 6, 1955.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Carmen each in the amount of 15 hours pay at the applicable rate of pay.

EMPLOYES' STATEMENT OF FACTS: The Duluth, South Shore & Atlantic Railroad Company (hereinafter referred to as the carrier) has one regularly assigned wrecking crew consisting of Carmen George Gingrass, George R. Hill, George Chiconsky, Adlord D. Clement, Arthur Mineau, Leo Grieninger and Leo J. Thibodeau (hereinafter referred to as the claimants) who are employed at Marquette, Michigan from 7:00 A.M. to 12 Noon-1:00 P.M. to 4:00 P.M., Monday through Friday, and who are used for wrecking service on the entire system.

The carrier does not maintain or own a wrecking outfit, but, has a standing agreement with the Lake Superior and Ishpeming Railroad that when an outfit is needed by the carrier it will be sent out with the Lake Superior and Ishpeming engineer and fireman accompanying it and the regularly assigned wrecking crew of the carrier performs the ground work. The carrier does not have a qualified engineer or fireman.

The organization also made much of the fact that the C&NW wrecker and crew did not arrive at the derailment until 11:45 P.M., ignoring the fact that they were delayed over two hours by another train with a broken knuckle. This delay, of course, could not be foreseen.

From this convenient, though unrealistic, point they go on to argue that the L.S.&I. wrecker could have reached the scene of the derailment almost as early as the C&NW wrecker did. To support this argument they arbitrarily increase the maximum speed limit for this type of equipment from 20 m.p.h. to 25 m.p.h. and apparently have computed travel time from the time the L.S.&I. wrecker might have been ready had we ordered it in the first place.

At first glance there might appear to be some merit to their arguments. But a second look shows this merely to be hindsight. Bear in mind that there was no objection on the part of the crew to being use to man the C&NW wrecker. However, when it was later learned that the C&NW crew would have to be used the employes then claimed that the carrier should have foreseen this and ordered the L.S.&I. wrecker originally.

Briefly summarized, the carrier was faced with an emergency. Carrier in good faith made preliminary arrangements to clear the main line as expeditiously as possible. Unforeseen obstacles beyond the control of the carrier were met and overcome in a reasonable manner. The rules of the agreement do not support the claim and carrier respectfully urges the Board to so hold.

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.

It appears that this carrier does not own a wrecking outfit, but does have a group consisting of the claimants, who are designated as the regular assigned wrecking crew, and who on past occasions have been used to man the wrecking equipment loaned their employer by the Lake Superior and Ishpeming Railroad Company at its option.

When the wreck occurred at Saxon the carrier official elected not to call the Lake Superior and Ishpeming, but instead obtained a Chicago and North Western wrecking outfit with its crew to handle the emergency.

The employes claim that Rule 158 which provides that "when the wrecker is called * * * the regular crew will accompany the outfit, * * *" has been violated. We are of the opinion that the quoted language was not intended to apply to a borrowed wrecking outfit. In emergency wreck situations, carriers have been permitted by various awards to obtain help from available sources without being held to have violated rules similar to Rule 158.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2724

The holding of the majority that the quoted language of Rule 158

> "when the wrecker is called * * * the regular crew will accompany the outfit, * * *"

was not intended to apply to a borrowed wrecking outfit is refuted by the simple fact that no exception is made in the rule in the event a borrowed outfit is used.

The record in the case discloses that the claimants, members of the carrier's regularly assigned wrecking crew, were properly called but were not used and were no compensated. Based upon the facts of this case, under the applicable rules the carrier had a definite responsibility to use the claimants to perform the wrecking service in question and they should have been compensated as claimed.

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink