

Award No. 2992
Docket No. 2675
2-D&RGW-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. The current agreement was violated when the regularly assigned wrecking crew at Pueblo, Colorado were not all called to accompany the outfit, April 6, 1956, when it was called to rerail an American Crane of the American Smelter and Refining Company at Leadville, Colorado.

2. Accordingly, the Company should compensate Messrs. B. M. Junta, P. L. McGill and L. Denton, Carmen, regularly assigned to the Pueblo wrecking crew, the amount each would have earned had they been called to perform the work.

B. M. Junta had regularly assigned hours of 7 A.M. to 3 P.M. His claim is for 21½ hours or time and one-half from 3 P.M. April 6 to 5:20 A.M. April 7.

P. L. McGill has regularly assigned hours of 7:30 A.M. to 4 P.M. with 30 minutes for lunch. As he would have been paid his lunch period on the wrecking crew his total claim amounts to 20¾ hours or time and one-half from 12 N. to 12:30 P.M. and from 4 P.M. April 6 to 5:20 A.M. April 7.

L. Denton was on his rest day. He claims 27¼ hours or time and one-half from 11:10 A.M. April 6 to 5:20 A.M. on April 7.

3. The claim is for preparatory time from 11:10 A.M. to 12:10 P.M.; traveling time 12:10 P.M. to 6:20 P.M.; working time from 6:20 P.M. to 11:30 P.M. and traveling time to home point 11:30 P.M. to 5:20 A.M. on April 6th and morning of April 7th, 1956.

There is no rule in the current shop crafts' agreement which provides that carrier's employes must be used on carrier's equipment which is rented to other railroads or outside industries. As a matter of fact, carrier's wrecking crews are entitled by the shop crafts' agreement only to such work as may be done for the benefit of the carrier on its property as covered by that agreement.

The title page of the current shop crafts' agreement specifically provides that:

"It is understood that this agreement shall apply to those who perform the work specified in this agreement in the Maintenance of Equipment, and all other Departments of this Company wherein work covered by this Agreement is performed."

from which it is self-evident the current contract has application only to work performed on carrier's property. Moreover, neither what has just been quoted from the title page nor Rule 41—the Wrecking Crew Rule—of the agreement makes mention of the use of carrier's equipment or employes by other companies.

Carrier asserts in the case at issue, it has not in any manner violated any of the provisions of the current shop crafts' agreements. Carrier holds the current agreement is confined solely to its employes performing work on its property.

Carrier also asserts the American Smelter and Refining Company simply rented its wrecking outfit and used five of carrier's employes to rerail their crane on their property.

Carrier holds that neither Rule 41 nor any other rule of the shop crafts' agreement can be interpreted to give its employes rights to any work necessary to be performed at the American Smelter and Refining Company plant.

Carrier also holds there is no justification for the claim and asserts the provisions of Award 2213 of your Honorable Board meets on all fours the issue in the case at hand and supports in full the position of the carrier.

The claim should and must 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 pertinent part of Rule 41(c) is identical with the rule interpreted in our Award No. 2213, where we held that it applied to wrecks and derailments on carrier's property. Here one of carrier's wrecking derricks with a skeleton crew was made available to the American Smelting and Refining Company at Leadville, Colorado, to rerail one of their cranes within their plant at their expense. Thus it appears that Rule 41(c) was not applicable.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1958.