

Award No. 3254
Docket No. 3019
2-WP-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Roscoe G. Hornbeck when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 117, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

THE WESTERN PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement the Carrier improperly used other than Carmen to rerail Car PFE 9566 at the Stockton, California Train Yard on October 17, 1956.

2. That accordingly the Carrier be ordered to compensate the regularly assigned Carmen Wrecking Crew, J. N. Dudley, T. E. Clifton, M. Matich, W. H. Lerner, J. W. Cook, H. R. Rush, R. S. Pattison, E. A. Dent, S. O. Kister and V. E. Sprowl, at Oroville, California, each in the amount of eleven (11) and one-half ($\frac{1}{2}$) hours at the applicable time and one-half rate for the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: At 5:00 P. M. on Wednesday, October 17, 1956 loaded car PFE 9566 was derailed on the east end of track #3 in the Stockton, California Freight Yard of The Western Pacific Railroad Company, hereinafter referred to as the carrier. The carrier dispatched W. P. Crane No. 36 (capacity 30 tons) manned by five carmen and a car foreman to rerail car PFE 9566 but found that W. P. Crane No. 36 could not rerail the car due to insufficient capacity. The carrier then obtained and use a 35 ton off track industrial crane from Valley Steel and Welding Co. of Stockton, California manned by six Valley Steel and Welding Co. employes to assist in lifting and rerailing Car PFE 9566. The rerailment of Car PFE 9566 was completed at 12:00 Midnight, October 17, 1956.

The following carmen were available and were regularly assigned to the Oroville wrecking crew for wrecking service on October 17, 1956:

In conclusion carrier asserts the instant claim is wholly without merit and urges your Board to deny it in its entirety.

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.

Parties to said dispute were given due notice of hearing thereon.

The claim here must be resolved on the test — Did an emergency exist when the carrier called in the outside crane with its operatives?

Oroville, where the nearest wrecking crew of the carrier was stationed, was 110 miles from the site of the wreck. If called, it would have required not less than 5 hours for this crew with its crane and equipment to reach the Stockton Yards. During this interim awaiting arrival of the Oroville crew all work of rerailling of the car would have been suspended. The outside crane and crew were available sooner than the Oroville crew could have been.

The situation confronting the carrier was such as to cause it to believe, and in probability, an emergency did in fact exist.

The action taken by the carrier was justified and it should be relieved from the application of the rule here invoked.

Support for this award is found in Award No. 1954, Second Division.

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 June 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3254

The fallaciousness of the instant finding is revealed by the following sentence contained therein:

“The action taken by the carrier was justified and it should be relieved from the application of the rule here involved.”

Agreements are presumed to be made in good faith and are to be followed unless changed in accordance with the orderly procedure of the Railway Labor Act. The majority by refusing to apply the agreement has

ignored the fact that it is the duty of the National Railroad Adjustment Board to interpret and apply the rules of the governing agreement.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner