

Award No. 3589

Docket No. 3143

2-MV-CM-60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

MIDLAND VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, the St. Louis-San Francisco Railway wrecking ground crew was improperly used to clear up a wreck on the Midland Valley Railroad property at Jenks, Oklahoma, on September 12 and 13, 1957.

2. That accordingly the Carrier be ordered to additionally compensate the following named Midland Valley Railroad Carmen:

M. W. Thomas
D. D. Lanier
R. M. Palmer
O. M. Thomas

W. F. Adams
L. F. Hoover
B. E. Fugate
C. W. Tramell

eight (8) hours each at the applicable time and one-half rate for the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: The Midland Valley Railroad Company, hereinafter referred to as the carrier, maintains a force of carmen, a wrecking outfit and crew at Muskogee, Oklahoma.

On Thursday, September 12, 1957, about 2:00 P. M., a Midland Valley freight train derailed 20 cars at Jenks, Oklahoma, a distance of approximately 42 miles from Muskogee, Oklahoma. The carrier called the St. Louis-San Francisco wrecking crew from Tulsa, Oklahoma, a distance of about ten (10) miles from Jenks, Oklahoma, which arrived and worked until 7:30 P. M., September 12, 1957, clearing up the derailment. The St. Louis-San Francisco crew next began work at 6:00 A. M., September 13, 1957, and worked until 7:00 P. M. the same date, at which time they were relieved and returned to the St. Louis-San Francisco Railway.

On Monday, September 16, 1957, the Midland Valley Railroad's Muskogee

Conclusion

The carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and respectfully requests the Board to so find and deny the claim.

FINDINGS: The Second Division of the Adjustment Board, based upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 evidence shows: (1) that the nature and extent of the wreck was such that the carrier's wrecking equipment was inadequate to meet the emergency created by the derailment of 26 cars of coal and to expeditiously clear the main line; (2) it was therefore necessary to employ the St. L-SF wrecker and crew until Friday evening, September 17, 1957; (3) there was no regularly assigned wrecking crew on the carrier's property; and (4) as soon as the foreign wrecking crew handled the immediate need for which its equipment was required, claimants were sent to the scene to perform the remaining work.

In view of these uncontroverted material facts, we find no basis for a sustaining award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1960.