

Award No. 4394
Docket No. 4212
2-GTW-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 92, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

GRAND TRUNK WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly used other than the regular assigned wrecking crew members to perform wrecking service on Saturday, January 21, 1961.

2. That accordingly the regular assigned wrecking crew members consisting of Carmen M. L. Washburn, Martin LaBrie, W. Martin and W. A. Sheriff, each be additionally compensated for a four (4) hour call at straight time rate.

EMPLOYEES STATEMENT OF FACTS: The carrier maintains at various points of which Pontiac, Michigan, is one, trucks equipped with jacks, frogs, blocking, cables, pinchbars, slew plates and etc., for use in minor derailments, where the larger auxiliaries are not needed.

The above named claimants were and are the regularly assigned wrecking crew members assigned by bid on bulletins posted at Pontiac, Michigan, in accordance with the bulletin rule.

On Saturday, January 21, 1961, a derailment occurred within the yard limits at the Howard Street crossover and carmen regularly employed on the repair track were used in place of the claimants, who were off duty on their regular assigned rest days.

Agreement dated at Detroit, Michigan, July 26, 1960, and effective as of September 1, 1949, is controlling.

POSITION OF EMPLOYEES: It is the contention of the employes that the claimants who were regularly assigned to the wrecking crew by bid under the provisions of rule 14, bulletining and filling of vacancies, the first paragraph of which provides:

"Battle Creek, Michigan
March 27, 1959
File: 8405-634

Mr. Walter E. Chaffee, General Chairman
Brotherhood Railway Carmen of America
5271 Griswold Road
Port Huron, Michigan

Dear Sir:

Your letter of March 11th to which was attached Grievance Form from Carmen at Pontiac relative to wrecking service performed on February 21, 1959.

This wrecking service was performed on Saturday during regular working hours by Carmen from the Repair Track. This was the regular rest day for members of the wrecking crew and had it been necessary to perform this work on overtime hours they would have been called, however, as long as we have men available during regular working hours we do not feel that we are required to call in members of the wrecking crew at punitive time. **This not only applies at Pontiac but at other stations.**

Under the circumstances payment of the claim is declined.

As a matter of information the car WM 15483 was derailed on the Fisher Body Company coal track and so far as the company is concerned could have been left until Monday. The work was simply performed on Saturday because we had men available.

Yours truly

/s/ H. Askew
Genl. Supt. M.P. & C.E."

It should be pointed out at this time, that while the employees have contended that the wrecking crew was entitled to be called for all wrecking service which might occur on their rest days, they have not cited one instance where wrecking crew members, who were off duty on a rest day of their regular carmen assignments, have ever been called for wrecking service when there were carmen on duty and available for service from the repair track.

The instant claim not being supported by either the working agreement or the past practice in effect at Pontiac, Michigan, should be denied and carrier requests that this Board so award.

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 employees 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 waived right of appearance at hearing thereon.

On Saturday, January 21, 1961, one empty hopper car derailed in Carrier's Pontiac, Michigan yard. Two regularly assigned carmen from the regular shift on the repair track were sent to the scene to reraill the car involved. The two carmen did not use the wreck truck or its equipment and were absent from their regular duties a total of 35 minutes. Claimants, as regular members of the wrecking crew, allege that the Carrier violated the applicable agreement by not calling them to work, from one of their regular rest days, to perform the work involved in this dispute.

The Carrier determined that the wrecking crew was not needed at the scene and thereafter assigned the work to regular assigned carmen. We find no fault with this determination on these facts.

The evidence presented to us in this case does not require that we resolve the applicability, or the soundness, of Carrier's argument that it is not required to call the members of the wrecking crew to work if other carmen are working a regular shift at the time the wreck truck is needed. For the purpose of this award the argument referred to above is ignored.

It is our opinion, for the reasons given previously, that the claims should be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1964.