

Award No. 4398
Docket No. 4223
2-CRR of NJ-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. 72, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

THE CENTRAL RAILROAD COMPANY of NEW JERSEY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the provisions of the Agreement were violated January 25, 1961 when the Carrier dispatched the Ashley, Penna. wrecking outfit to Allentown, Penna. without the regular assigned crew.
2. That the provisions of the Agreement were violated when the Carrier substituted other employees for the regular assigned crew on January 26, 1961.
3. That accordingly, the Carrier be ordered to compensate the following named regularly assigned Ashley crew for the difference in the amount earned during this period and amount they would have earned equal to the sum paid Fireman J. Tinner:

S. Caplar
F. Derolf
R. Falcheck
E. Heck

J. Banesh
J. Yedlock
J. Ferentz

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a wrecking outfit at Ashley, Penna. and a regular assigned crew. The above mentioned members of the crew are employed as carmen at the Ashley repair track. These men will hereinafter be referred to as claimants employed by the Central Railroad Company of New Jersey and the railroad company hereinafter identified as the carrier.

On January 23, 1961 the Bethlehem service train was called to clear up a derailment of 17 cars at VN interlocking in Allentown, Penna. They were assisted by the Reading Company wrecking train and re-railed some cars and set other cars aside and worked until 8:00 A. M. January 25, 1961 when they tied up for rest.

On January 25, 1961 the Ashley derrick and idler left Ashley accompanied by Fireman J. Tinner.

vides that a sufficient number of men will be used when the wreck outfit is placed in service, while the Agreement of August 20, 1960 specifies the minimum number of crew members to be called when the service train is called to clear up wrecks or derailments. The words "train" and "outfit" are, obviously, synonymous, and are used to denote instances when the full complement of varied wrecking equipment and cars are placed in service and not certain component parts of the whole.

On January 26, 1961, the entire Ashley wreck outfit was not put in service, but only the derrick. Therefore, the Ashley engineer and fireman (a sufficient number) were used on that derrick, while the full minimum crew of the Bethlehem service train outfit were called for service simply because the entire train was placed in operation.

There is a practice not uncommon on this property; in fact, the number of occasions involved would be too numerous and cumbersome to record, whereby we use only the blocking car of the wreck outfit to rerail cars involved in minor yard derailments and the employes have never taken exception to the manner in which our people assigned whatever they considered a sufficient number of personnel to accomplish the job. On none of these occasions were any claims or objections ever made because of this logical and common procedure, either by the Brotherhood of Railway Carmen or any of the employes involved.

In the light of the foregoing, and considering that no rule, precedent or practice has been or can be cited to support the contention of the employes, the carrier respectfully requests the Board to deny the claim 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 waived right of appearance at hearing thereon.

On January 23, 1961, the Bethlehem Service train, with 2 derricks, and assisted by The Reading Company wrecking train, was called to clear up a derailment of 17 cars at VN Interlocking in Allentown, Penna. This group worked until 8:00 A. M. January 25, 1961 when they tied up for rest. On January 25, 1961 the Carrier dispatched the Ashley, Penna. derrick and idler to Allentown, accompanied by the Ashley fireman and ordered its Ashley engineer to be available for work in Allentown at 6:00 A. M. January 26, 1961.

The Ashley engineer and fireman, in the Ashley derrick and idler, accompanied the Bethlehem service train and its crew to the scene of this wreck on January 26, 1961 and remained at the scene working until the wreck was cleared.

Claimants contend that they, as regular members of the Ashley service train, should have been called to serve as crew at the scene of the wreck because a portion of their service train was called. In support of their position claimants cite rules 127 and 128 of the applicable agreement and also a

letter Agreement dated August 20, 1960 pertaining to the use of Service Trains and rerailling of equipment. Each of these submissions, as well as prior Awards 2185, 2404, 3365 and companion Awards 4280 and 4281, offered by the Organization as being in point with the facts presented herein, have been examined in detail.

Award 4280 and its companion Award 4281 provides, "Our Award 2185 is analagous to the situation here presented * * *. (See also our Awards 2404 and 3365, where, under similar factual situations and similar Rules we upheld claimants' contentions)." We are of the opinion that the facts of Awards 4280 and 4281 were not analagous to the facts of Award 2185 but be that as it may; the facts of Award 2185 are not analagous to the situation before us, nor are the instant facts similar to Awards 2404 and 3365. We believe however, that the distinguishing features of the Awards mentioned should be enumerated.

The facts before us are that the Bethlehem crew and their service train, working with the Reading Company wrecking outfit, cleared the track and set aside some cars for later clearance; there was no evidence to the effect that subsequently, when the Ashley derrick and idler were also used, the Bethlehem crew was increased in size or that the Bethlehem service train was not the same as originally used. In Award 2185 the Spokane crew was substituted for the Hinkle crew because the wreck scene was located in Spokane territory. There was no substitution of crew involved herein. It was also shown that here the Bethlehem outfit had two derricks at the scene on January 23 and 24, plus a derrick from the Reading Company wrecking train. The Carrier determined in this instance that three derricks with only one crew would be needed to clear the cars which had been set aside on January 24 and thereupon called the Ashley derrick, with its fireman and engineer, to be available January 26. In Award 2404 the Carrier substituted the Hinkle crew for the Huntington crew on the Huntington wrecker after the Hinkle wrecker broke down. In the case before us the Ashley derrick was not substituted for the Bethlehem derricks but instead supplemented them.

Award 3365 is not truly analogous to the case before us therefore, we need not distinguish it except to say that in that case the carrier failed to call a sufficient number of the regularly assigned wrecking crew to accompany the outfit whereas in the instant case a sufficient number did accompany the outfit.

We are of the opinion that based upon the facts presented and which have been discussed above, 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.