

Award No. 4400

Docket No. 4230

2-SOU-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. 21, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement, particularly Rules 152 and 153, when on December 23, 1960 a derrick outfit and a crew of six Carmen from the Illinois Central Railroad were dispatched to reraill five cars on a side track, identified as Dumesnil Siding, Louisville Division, Southern Railway System.

2. That the Carrier be ordered to additionally compensate Carmen C. E. Westerfield, J. W. Eastham, C. E. Silvers, J. L. Roysdon, G. B. Fuell, Danville, Kentucky, for sixteen (16) hours at rate of time and one-half, and Carman M. C. Hall, Danville, Kentucky, eight (8) hours' pay at pro rata rate and eight (8) hours' pay at rate of time and one-half.

EMPLOYES' STATEMENT OF FACTS: Carmen C. E. Westerfield, J. W. Eastham, C. E. Silvers, J. L. Roysdon, G. B. Fuell and M. C. Hall, hereinafter referred to as the claimants, employed by the Carrier at Danville, Kentucky, where carrier has located and maintains a derrick outfit for wrecking service work on Louisville Division and elsewhere on the Southern System when needed.

On December 23, 1960, a Southern switch engine derailed five (5) cars on Dumesnil siding, (away from main line and creating no emergency), Louisville Division. At about 3:30 P. M., same date, a derrick outfit and crew of six carmen from the Illinois Railroad were sent to scene of derailment and proceeded to reraill these cars.

This dispute has been handled with the carrier's officers designated to handle such matters, in compliance with current agreement, all of whom have refused or declined to make satisfactory settlement.

The agreement effective March 1, 1926, as subsequently amended is controlling.

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."

CONCLUSION

Carrier has shown that:

(a) The controlling agreement was not violated and claimants do not have a contract right to the compensation here demanded.

(b) Prior awards have denied similar claims.

On the record only a denial award can be made.

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.

Carrier's Train #153, because of engine trouble, set out 17 loaded and 8 empty cars on Dumesnil Siding, a highly important siding located 8.3 miles east of Louisville, Kentucky. These set out cars were to be picked up by Train #59 later that same day, December 23, 1960. As Train #59 pulled the cars out, 3 loaded and 2 empty cars derailed as a result of the negligence of the crew from Train #153.

Due to the distances involved, the necessity of restoring the highly important siding to service and the need to get the derailed cars moving again as rapidly as possible the Carrier, in accordance with the practice in existence on the property in similar situations, called upon the Illinois Central Railroad Company to send its Louisville outfit to the scene. The claimants contend that Carrier should have called upon its own nearest outfit which was located at Danville, Ky., 85 miles away.

It has long been recognized that the reciprocal use of wrecking outfits does not violate the intent of rules which are similar to Rule 152 and Rule 153 of the current agreement between these parties. See: Award #1176. For the reasons stated above the claims should be denied.

AWARD

Claim 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.

LABOR MEMBERS DISSENT TO AWARD 4400

The majority bases its findings on alleged practice in existence on the property. Practice cannot abrogate the terms of an agreement. Rules 152 and 153 of the governing agreement are plain and unambiguous. The carrier can, and should be, required to fulfill the terms of an agreement at any time.

The majority cites one award in a vain attempt to justify its findings that "It has long been recognized that the reciprocal use of wrecking outfits does not violate the intent of rules which are similar to Rules 152 and 153 of the current agreement." Such is not the case and under the clear and precise terms of Rules 152 and 153 the claim of the carmen to the work involved should have been sustained.

E. J. McDermott

T. E. Losey

C. E. Bagwell

R. E. Stenzinger

James B. Zink