

Award No. 4413
Docket No. 4116
2-NYNH&H-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**THE NEW YORK, NEW HAVEN & HARTFORD
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the New York, New Haven and Hartford R. R. Co., improperly used Sectionmen and Engine crews to rerail seven (7) cars, on Wednesday, September 2, 1959, at East Bound Hump, Cedar Hill, Conn.

2. That accordingly the New York, New Haven and Hartford R. R. Co., be ordered to additionally compensate the following named regularly assigned members of the New Haven wreck train outfit, two (2) hours each, at the time and one-half rate of pay:

C. Bengivengo	T. Bohan	D. Fitzgerald	H. Fay
J. Lombardio	K. Sennett	W. Savenelli	
A. Raccio	R. O'Neill	C. McHugh	

EMPLOYES' STATEMENT OF FACTS: On Wednesday, September 2, 1959, a derailment occurred in the east bound hump yard, Cedar Hill, Conn., in which nine (9) cars were derailed, DRGW 59874, SP 105413, D&H 7530, NH 31541, NP 29035, RDG 109135, CNW 23520, CN 530722 and DLW 83580. The New Haven, Conn., wrecking outfit and part of the crew were called for this derailment at 12:00 Noon and arrived at the site of the derailment at 2:00 P. M., Sept. 2, 1959.

The wrecking outfit and crew returned to New Haven, Conn., and were released from wrecking service at 5:30 P. M., same day. On the arrival of the wrecked train and crew at the site of the derailment, the wrecking crew found that seven (7) of the nine (9) cars derailed had been rerailed by engine and yard crews with the assistance of Sectionmen, laying and spiking replacers and setting up blocking, leaving two (2) cars, DRGW 59874 and SP 105413, to be rerailed by the wrecking outfit and crew, this confirmed by statements of H. Fay and R. O'Neill, two regular assigned members of the

to act in these circumstances, yet we submit that it is unrealistic to presume carrier would, or could, do otherwise under the conditions present.

However, whether a penalty arises for the carrier's action turns, we submit, upon the intent and effect to be given the ruling of your Board when it says employees enjoy an exclusive right to the work "when the wrecking crew is called or required."

Awards 2049, 3257, and others which have passed on rules identical to our Rule 111 have held that carrier may use other than carmen to reraill cars when the wrecker is not called or required. We understand these awards to mean by implication that if the wrecker is called or required for derailments within the yard, then it would not be permissible to substitute track or operating personnel for members of the wrecking crew who would otherwise have been called.

Here the track foreman and track walker were not substituted for a carman who otherwise would have been called, and there is no contention that some particular member of the wrecking crew would have been called but for the carrier's use of the track foreman and track walker. The contention is that all men called were deprived of two hours' overtime because of work performed by the track foreman and track walker prior to the arrival of the wrecker but at a time when the crew was under pay.

After the track foreman set the replacers, he then assembled his gang and began to repair the track so that the tool train could work rerailling the other cars. There is no contention that the track foreman or members of his gang performed work of the wrecking crew after they arrived.

We submit that the use of the track foreman and track walker to perform such work as they were able prior to the arrival of the wrecking crew was no violation of the agreement between the parties. The work was not exclusively that of the claimants and its performance was justified under the circumstances shown. The claim should be denied.

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 September 2, 1959 a derailment of nine cars occurred at Cedar Hill, Conn. The New Haven wrecking outfit and part of the crew were called at 12:00 Noon, arrived at the site at 2:00 P.M., and returned to New Haven at 5:30 P.M. the same day. Upon arrival at the scene, the wrecking crew discovered that seven of the nine cars had been rerailed by engine and yard crews, aided by Sectionmen.

Claimants contend that the assignment of rerailling duties to other than carmen when the wrecking crew and outfit had been called is a violation of the current agreement.

Carrier contends that the work of rerailing here was divisible; that an emergency existed which required action by management; and the work was not exclusively that of Claimants.

We have examined the authorities submitted, together with the facts of record, and we conclude that there was a violation of the agreement. There was no such emergency as to permit Carrier to use other than the regularly assigned wrecking crew to perform the rerailing under the facts disclosed. Under the circumstances revealed in the record and under the controlling agreement, the Claimants were entitled to the work.

The claim is for two (2) hours each at the time and one-half rate. The record does not clearly disclose how this computation should be made and this part of the claim is remanded to the property for this determination, since it appears that Claimants were under pay in other work, during the time complained of.

AWARD

Claim 1: Sustained.

Claim 2: Sustained to the extent indicated, but remanded for ascertainment of amounts payable.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February, 1964.