

Award No. 4538
Docket No. 4310
2-CRI&P-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. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That the Carrier violated the controlling agreement when Carmen Henry Swalley, G. D. Sharp and Fred Greenwell were not called to accompany the wrecking outfit when it left Cedar Rapids, Iowa at 7:30 A. M. on September 18, 1961.

(2) That accordingly the Carrier be ordered to compensate Henry Swalley 1 hour at pro-rata rate, 8½ hours at the punitive rate, G. D. Sharp, 11 hours at the punitive rate and Fred Greenwell, 1 hour at the pro-rata rate and 12 hours at the punitive rate.

EMPLOYEES' STATEMENT OF FACTS: The Chicago, Rock Island & Pacific Railroad Company hereinafter referred to as the carrier, maintains at Cedar Rapids, Iowa a wrecking outfit and regularly assigned wrecking crew composed of carmen of which Carmen Swalley, Sharp and Greenwell hereinafter referred to as the claimants, are regularly assigned members thereof.

On September 18, 1961 the wrecking outfit was called and left Cedar Rapids, Iowa at 7:30 A. M. for a derailment North of Cedar Rapids, Iowa, of freight Train #52 in which numerous cars were derailed and overturned. Some of the derailed cars were loaded with some 25 John Deere tractors which were strewn over the right of way.

The regularly assigned wrecking crew, with the exception of the three claimants, worked from 7:30 A. M. until 7:30 P. M. on September 18, 1961 on this derailment.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier,

tember 1, 1949. A copy of this agreement is on file with your Board and by reference is made a part of this submission.

2. On September 18, 1961, train No. 52 derailed north of Cedar Rapids yard limits. The derailment in question involved five flat car loads of John Deere tractors, totaling approximately 35 tractors. Approximately 25 of these tractors were strewn over the right of way loose in such a manner that they would interfere with the rerailling of the equipment, but in such a position that they could be picked up without moving any of the derailed cars.

3. The work plan which was carried out on the date in question was to pick up these tractors only from the right of way, with no rerailling done. To accomplish this the Cedar Rapids Derrick was called to assist maintenance of way employes in clearing the right of way by picking up the tractors and loading them in a gondola car.

4. Four men, the wrecker foreman, wrecker engineer and two carmen were dispatched with the derrick to operate it and set outrigger if required. However, the material was light enough that an outrigger was not used the entire day.

5. Following this claim was made by three carmen, here involved, who were members of the wrecking crew account not called to accompany the derrick. The claim was declined because wrecking service was not performed.

POSITION OF CARRIER: The derrick belongs to the carrier not the carmen, and the carrier directs its use. It can be and is used in wrecker service. It can be and is used in other service, setting a bridge, loading or unloading equipment from the maintenance of way department, etc. The rights of the assigned wrecking crew attach only to wrecking service. When the derrick is used to set a bridge, or load and unload equipment, the entire wrecking crew is not used, nor are they required to be used since no wrecking service is performed. That is the situation here exactly — no wrecking service was performed and consequently the claimants have no contractual right to claim the work.

The organization has cited Rule 114 to support this claim and Award 2385 as supporting their position as to application of Rule 114. We direct the board's attention, however, to analysis of award 2385 particularly that part of the findings reading (emphasis added) :

“* * * both crews worked at the rerailling of the cars, the section gang helped the wrecker crew do so, but **the section crew also worked at rehabilitating the track, clearing up the debris and restoring service.**”

The foregoing conclusively shows no wrecking service was performed and consequently the claims here are totally invalid and 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.

Claimants are regularly assigned members of Carrier's wrecking crew at Cedar Rapids, Iowa.

On September 18, 1961, the wrecking derrick and part of the wrecking crew were sent to the scene of a derailment near Cedar Rapids where numerous cars were derailed and overturned. Approximately 25 John Deere tractors which had been on flat cars were strewn over the scene of the derailment.

Carrier maintains that the wrecker was called to assist the maintenance of way employes in picking up the tractors to clear the right of way and that no wrecking service was performed.

Claimants contend that wrecking service was performed in that eight freight car trucks were handled, and therefore the entire wrecking crew should have been sent with the derrick.

Rule 114 of the controlling agreement reads in part as follows:

"* * *

"When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. * * *."

We are confronted with a factual dispute. If in fact the only work performed was clearing the right of way of the tractors then the claims must be denied. If freight car trucks were handled, then wrecking service was performed and the Claims must be sustained.

Exhibit "B" attached to the Claimants' submission is a statement of members of the crew present at the site that trucks were handled. The only refutation of this statement is Carrier's assertion that the Master Mechanic on the scene **denied** any such handling. (cf. p. 1. of Carrier's rebuttal.) Yet Carrier's Exhibit "G", to which we are referred as a basis for this statement, merely recites that the Master Mechanic "says he has no recollection of any such happening".

The weight of the evidence in this record supports the claim, and we hold that wrecking service was performed and that under the rule the entire crew was entitled to accompany the outfit.

AWARD

Claim 1: Sustained.

Claim 2: Sustained. Compensation to be paid in accordance with Rule 11.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June, 1964.