

Award No. 4581  
Docket No. 4282  
2-NYC-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. 103, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**THE NEW YORK CENTRAL RAILROAD (Eastern District)**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That under the provisions of the controlling agreement, the Carrier on April 3, 1960 violated the agreement when it contracted the services of Higgins & Sons, Inc., to furnish one Mobile Crane, two operators and nine (9) riggers to assist in clearing up the wreckage and re-railing of twenty-eight (28) cars of Train No. PW-4 at Dunkirk, New York.

2. That accordingly the following designated carmen shall be compensated for the same number of hours that the employees of the Higgins & Sons Inc. worked in place of carmen.

N. Pauley	Engineer	Carman	P. Clayback	Groundman	Carman
C. Fydrych	Inspector	Carman	C. Paveljack	Groundman	Carman
E. Majchrzak	Groundman	Carman	M. Pietrowski	Groundman	Carman
E. Kozaczka	Groundman	Carman	F. Malczewski	Groundman	Carman
R. Gulkowski	Groundman	Carman			

April 4, 1960 1:00 P. M. to 8:00 P. M. Plus 1 hour travel time

April 5, 1960 8:00 A. M. to 8:00 P. M.

April 6, 1960 8:00 A. M. to 2:00 P. M.

3. That the Carrier be ordered to cease and desist from assigning or contracting wrecking service to other than the Cairmen's craft.

**EMPLOYES' STATEMENT OF FACTS:** On April 3, 1960 New York Central Train No. PW-4 was wrecked at Dunkirk, N.Y. approximately 41 miles west of Buffalo, N.Y. On April 3, 1960 the Collinwood, Ohio wrecker and crew was called at 6:30 P. M. for wrecking service for this wreck. They were released and ordered to their home station April 5, 1960 at 5:45 P. M. The Collinwood wrecker is located approximately 137 miles from Dunkirk, New York.

On April 3, 1960 the Ashtabula, Ohio wrecker and crew was called at 3:00 A. M. for wrecking service for this wreck. They were released and ordered to

It is therefore respectfully submitted that the claim is without merit and therefore 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 were given due notice of hearing thereon.

On April 3, 1960, a derailment occurred at Dunkirk, N. Y., when 38 cars were derailed and strewn over the right of way and down the embankment to a city street.

Claimants are Carmen employed at Carrier's Buffalo facilities.

From the evening of April 3, Carrier utilized the following men and equipment for the time indicated:

Carrier's Collinwood wrecker and crew until April 5, 5:45 P. M.

Carrier's Buffalo wrecker and crew until April 4, 6:15 P. M.

Carrier's Ashtabula wrecker and crew until April 6, 3:40 P. M.

A P. R. R. wrecker and crew until 9:40 P. M., April 4.

An off-track crane of the Higgins Co. with two operators and nine riggers, until 2:00 P. M. April 6.

Rule 157 of the controlling agreement reads in part as follows:

"(a) Regular assigned wrecking crews, including engineers, will be composed of carmen, where sufficient men are available, and will be paid for such service under Rule 10. Meals and lodging will be provided by the company while crews are on duty in wrecking service.

(b) When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.

\* \* \* \* \*

Claimants contend that the contracting of this work to the Higgins Co. was in violation of the controlling agreement.

Carrier maintains that since it had no off-track crane such as it needed under the circumstances of this major derailment, it properly exercised its managerial discretion in procuring the Higgins outfit.

Much of the submissions of the parties hereto is centered around the necessity of Carrier using private equipment. The record is sufficiently clear

to convince us that Carrier was making full use of its own available equipment and its decision that an off-track crane such as it hired from the Higgins Company was also necessary to the proper handling of this derailment will not be disturbed by us, under these circumstances.

What is disturbing however, is the use of Higgins' personnel to man the crane and the rigging. It is clear that the riggers were performing work at the scene of the derailment which comes within the Carmen's "Classification of Work" Rule. Claimants were available for this work and should have been called. There is no showing that Carrier, in hiring the Higgins outfit was obligated to take Higgins' personnel to act as a ground crew, and we express no opinion of our disposition of that issue had it been presented.

Concerning the two operators of the Higgins crane, the Claimants have not shown that they, as Carmen, were qualified to operate this type of equipment, and therefore we are unable to say that these two positions should have been filled by Claimants.

As to the compensation claimed herein, we find that these Claimants were the members of the Buffalo wrecking crew who attended this wreck and were under pay for wrecking service until 10 P. M., April 4, 1960. On April 5 and 6, 1960, they worked their regular assignments as Carmen from 8 A. M. to 4 P. M. We deny the claim made herein for the Engineer, and allow the eight other Claimants compensation at the time and one half rate for four hours on April 5, 1960, i.e., from 4 P. M. to 8 P. M. on that date.

Claimants, in part 3 of their claim seek an order from us to the Carrier to cease and desist from contracting wrecking service to other than the Carmen's craft.

We are invested with jurisdiction within the meaning of the Railway Labor Act, which nowhere gives us any injunctive authority. We decline to exceed our jurisdiction.

#### AWARD

Claim 1: Sustained as per our findings.

Claim 2: Sustained as per our findings.

Claim 3: Denied as per last paragraph of findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of September 1964.