

Award No. 4785
Docket No. 4570
2-MKCSJA-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 3, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)

MILWAUKEE-KANSAS CITY SOUTHERN JOINT AGENCY

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated when a sufficient number of the crew regularly assigned to the Kansas City, Missouri wrecker was not called to accompany the outfit when it was sent to Harr, Missouri and used in wrecking service May 2, 1962.

2. That accordingly, the Carrier be ordered to additionally compensate wrecking crew members O. A. Bell, J. F. Moore, W. H. Cann, E. F. Slater and Carl Schooley, eleven and one-half (11½) hours each at time and one-half rate for May 2, 1962.

EMPLOYES' STATEMENT OF FACTS: At Kansas City, Missouri the Kansas City Southern Railway Company, hereinafter referred to as the carrier, maintains a complete wrecking outfit and a crew of carmen regularly assigned thereto, among whom are O. A. Bell, J. F. Moore, W. H. Cann, E. F. Slater and Carl Schooley, hereinafter referred to as the claimants.

On May 2, 1962, the Kansas City wrecker, accompanied by the regularly assigned engineer, was dispatched to Harr, Missouri and used to perform wrecking service at that location. In the work performance at Harr, carmen employed at Pittsburgh, Kansas, together with a foreman and section men, were used to perform the ground work in connection with the Kansas City wrecker. Upon completion of the work the wrecker was returned to Kansas City.

This dispute has been handled up to and including the highest designated officer of the carrier who has declined to adjust it.

The Agreement effective June 1, 1945, as subsequently amended, is controlling.

During the handling of this matter on the property, many irrelevant arguments were advanced by the organization pertaining to the presence of General Car Foreman T. J. Wright at the scene of this and other derailments, and the presence of L. M. Hall and C. M. Johnson, who are assigned to the operation of the Wheel Truck. The wheel truck (of which we have several) is a large, heavy-duty, off-track truck, equipped with spare wheels, air compressor, welding equipment, power air jacks and a winch, and in many cases has been able to rerail and re-truck a bad order car, obviating the use of the on-rail wrecker.

Such arguments and allegations are not pertinent to the claim that claimants lost work as a result of the section foreman and section laborers assisting at the derailment, and have absolutely no relationship to a theoretical violation of Rule 81. Section forces and a car foreman usually are present at derailments or wrecks, and they have been used to assist at wrecks from time immemorial.

During the discussion of this claim in conference, organization representatives advised that the section forces and Mr. Wright helped set outriggers, block the wrecker and make hooks for the Kansas City wrecker, instead of using the Kansas City wrecker crew. This statement was and is denied by carrier; and as stated in affidavit signed by Wrecker Foreman C. A. Ray, the Pittsburg wrecker crew blocked the outriggers and the section forces assisted only by carrying the necessary ties and blocks. Such has been the customary practice of section forces for many years.

On the date in question, the Pittsburg wrecker and its entire crew were present, but because of the size and weight of the 20,000-gallon tank car, loaded with oil, the assistance of another wrecker was necessary. The Kansas City wrecker, including the derrick engineer, was used and worked with the other derrick. There were a sufficient number of carmen in the Pittsburg crew to handle the rerailing in question, and Wrecker Foreman C. A. Ray supervised and directed the operation of both machines.

Organization contends Rule 81(c) means that for wrecks or derailments outside of yard limits, the entire regularly assigned crew will accompany the outfit, instead of the very clear wording that "a sufficient number of the regularly assigned crew will accompany the outfit." The wrecker engineer was a sufficient crew in this instance, and carrier is not required to pay two wrecker crews for one job, one crew to work and one crew to watch the other crew work. The organization's idea borders on absurdity, and Rule 81 does not so require. The carrier fully complied with Rule 81.

Organization is attempting to revise the clear wording, intention and past practice of Rule 81 by persuading this Board to render a decision in its favor. Such is not within the jurisdiction of this Board, and under the circumstances 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 were given due notice of hearing thereon.

Only the Kansas City wrecker and engineer were sent to assist the Pittsburg wrecker and crew. Members of the Pittsburg wrecking crew and another Pittsburg carman blocked the outriggers for, and fired the Kansas City crane. Whether section forces also worked with it is disputed, but is unnecessary to determine.

In Award No. 857 this Division, without a referee, held that like circumstances constituted the calling of a wrecking crew and thus violated a rule identical with the provisions of Rule 81 (c) that

“When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit.”

That holding has been followed consistently by this Division in Awards Nos. 1702, 2185, 2404, 3365, 4280 and 4675. This twenty-three year line of precedents seems sound and should be followed. Each of the Claimants should be paid the difference between what he earned and what he would have earned had he accompanied the outfit, provided it does not exceed the amount claimed.

AWARD

Claim 1 sustained.

Claim 2 sustained to the extent stated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October, 1965.