

**Award No. 4835**

**Docket No. 4688**

**2-MP-CM-'66**

**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. 2, RAILWAY EMPLOYEES'**

**DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)**

**MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the controlling agreement, particularly Rules 119 and 120 were violated when the Missouri Pacific Railroad Company used other than carmen to rerail cars MP 60690, MP 60177, MP 60438, MP 50665, MP 60254 (three of these cars were turned over), MP 59089, MP 60926, MP 60114, MP 59662, MP 60130 and Monon 41583 at Pinckneyville, Illinois on August 20, 21, 22, 23 and 24, 1962.

2. That accordingly the Missouri Pacific Railroad Company be ordered to compensate the following members of the regularly assigned wrecking crew in the amount of eight (8) hours each at the straight time rate and one (1) hour each at the punitive rate for August 20, 21, 22, 23 and 24, 1962:

Carman E. C. Schuchert — Wrecking Engineer  
Carmen R. E. Hoock  
Carman W. E. Ingram  
Carman J. Pankey  
Carman W. E. Fischer  
Carman R. Stillwell  
Carman L. G. Pullen

**EMPLOYEES' STATEMENT OF FACTS:** Pinckneyville, Illinois, a terminal on the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, where two carmen are employed, and on August 18, 1962 a derailment occurred involving the following cars: MP 60690, MP 60177, MP 60438, MP 59665 and MP 60254—ment and wreck until Monday, August 20, 1962.

On August 20, 1962 another derailment of six (6) cars—MP 59009, MP 60926, MP 60114, MP 59662, MP 60130 and Monon 41583—occurred on the Mine Pass Track located west of the roundhouse office at Pinckneyville, Illinois, and four of these cars were turned over and in bad condition.

On August 20, 1962, Road Master Ben Casin and twelve (12) section laborers, with the aid of two dragline machines (MP-DL 22 and DL 23) started rerailing and

not be members of the wrecking crew be called to perform the work, if available. As we have stated above, carmen were not available at Pinckneyville to perform this work. The carmen employed at Pinckneyville were fully occupied with their normal duties of inspecting cars and servicing journal boxes and were not available to perform the rerailing work.

As we have seen, the work of rerailing cars has not been assigned exclusively to carmen. The shop craft agreement does not prohibit the use of other employees to perform such work. Furthermore, it follows that the rule does not require the carrier to call a regularly assigned wrecking crew every time there is a derailment. In this case, the carrier did not call a wrecking crew. The claimants who are members of the regularly assigned wrecking crew were not called and did not perform any work at Pinckneyville for the nine hours on each of the five days for which claim is made. Claimants worked regularly on their normal assignments at Dupo during the period of the claim. Claimants suffered no loss of pay and there is no basis, in any event, for a claim on behalf of the wrecking crew at Dupo and certainly no basis for the monetary claim. The employees have even requested your board to award the claimants one hour for each of the days at the time and one-half rate even though no service was performed.

In Award 4112, your board denied a monetary claim involving the same parties and same agreement as those present in this dispute where the employees were unable to show the claimant in that case suffered any loss. The employees alleged, in that dispute that the carrier violated that agreement by failing to assign the proper carman to fill a vacation vacancy. A claim was filed on behalf of a carman who had a regular assignment and who lost no time. The claim was denied. A similar decision was rendered in Award 3967.

Furthermore, there is no rule to support the penalty requested in this claim and your Board has no authority to assess a penalty in the absence of a rule. See Award 3672.

Although the principle is so well established that a claimant is not entitled to the time and one-half rate where he has suffered a loss of pay but has performed no work that citation should not be necessary, we call your attention to Awards 2958 and 2700 which denied claims for the punitive rate where no work was performed.

In the instant claim, a number of cars had been derailed because of a defective track condition. Trackmen were called who rerailed the cars and got them out of the way and repaired the track damage. The claimants were not called and were not used and suffered no loss of pay. Under these facts, there is no basis whatsoever for the claim and the claim was denied in its entirety.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The applicable rules are as follows:

"Rule 119(a). Regularly assigned wrecking crews will be composed of carmen and helpers, where sufficient men are available, \* \* \*."

"Rule 210. 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. For wrecks or derailments within yard limits, sufficient carmen and helpers will be called to perform the work, if available."

Two draglines were used in lieu of the wrecking derrick to handle this derailment at Pinckneyville, outside of the Dupo yard limits, where the wrecking crew was stationed. Many awards of this Division have held, under these and similar rules, that in the absence of special circumstances, such as emergencies, regularly assigned wrecking crews are entitled to wrecking work when their derrick or similar equipment is used and that under such circumstances they should be called.

Awards 1322, 2343, 2740 and 4393, cited by the Carrier, the last three of which relate to this property and this Agreement, did not involve the use of a dragline or similar equipment and therefore are not persuasive.

In connection with this incident the Organization has already claimed and accepted payment for the two carmen stationed at Pinckneyville who were not used. It cannot consistently demand compensation for the wrecking crew also.

A W A R D

Claim 1 sustained.

Claim 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.