

**Award No. 4836**

**Docket No. 4694**

**2-EJ&E-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.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYES'**

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

**ELGIN, JOLIET & EASTERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1—That the Elgin, Joliet and Eastern Railway Company violated the current working agreement when, instead of using the wrecking outfit and its regularly assigned crew, used a Bridge and Building Department mobile crane, a B&B Crane Operator, Mr. Wallace, Section Foreman Mr. Vickey, four section men and two car inspectors, Mr. A. B. Kovach and Mr. A. A. Balberg, for wrecking service at Waukegan, Ill., on October 29, 1962.

2—That the Elgin, Joliet and Eastern Railway Company be ordered to compensate each member of the Joliet wrecking crew, Messrs. H. Shaw, J. Szpiech, A. Mejia, A. Sefcik, E. Franzen, J. Zupanic, P. Gomez and G. DeAngelis, six (6) hours at time and one-half rate account the violation.

**EMPLOYEES' STATEMENT OF FACTS:** The Elgin, Joliet and Eastern Railway Company, hereinafter referred to as the carrier, maintains a switching point and a small repair shop at its Waukegan, Illinois facility, where it employs a work force of five (5) carmen. It maintains no wrecking outfit or wrecking crew at this point.

The carrier maintains a large repair shop facility at Joliet, Ill., which is approximately 65 miles south of Waukegan, Illinois, where it employs a substantial number of carmen and carmen helpers. It also maintains, at Joliet, a wrecking outfit and a regular assigned wrecking crew consisting of eight (8) carmen and who are the claimants in this case, and who are hereinafter referred to as the claimants. This wrecking outfit and crew serves the Waukegan, Illinois area when a derrick is needed for wrecking service.

On October 27, 1962, E. J. & E. Cars Nos. 40452 and 40248 were derailed in the Chevrolet Sangamon Gary Iron Coke Plant located in the city of Waukegan, Illinois. It was determined by the carrier on October 27, 1962, that a wrecking outfit and crew were needed to effect rerailment of this equipment.

other Carmen's work he was doing at the time at Joliet, boarded "the hook," gone to Waukegan, rerailed the two empty hoppers, and then returned to his carmen's duties at Joliet. Thus, we also find that the claimants are endeavoring to establish a heretofore nonexistent separate and distinct rate of pay for their collateral duty of "the hook's" wreck crew.

**CONCLUSION:** The carrier submits that the derailment of the subject two empty hopper cars could have been cleared up by Carmen Kovach and Balberg and that, if additional assistance was actually necessary (which in no manner is conceded), Carmen Coleman and Messer would have been called. The derailment occurred **within the yard limits** at Waukegan, Illinois, and available Carmen whose seniority is limited to that station have a right to the work unless and until their number and/or their equipment is not sufficient to do the job. In such cases, the carrier may call for additional carmen from other seniority points (without calling out "the hook") or it may call for "the hook." In either event the carrier, alone, has the right to determine how many additional carmen are needed and when the services of "the hook" are required. In the latter event, the carrier has the right to determine how many of "the hook's" crew are necessary to get the job done. The carrier's determination, of course, are always subject to challenge.

It is one thing to police an agreement, but it is another thing to endeavor to expand upon one. The instant claim is without merit and should be declined by the board.

**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 waived right of appearance at hearing thereon.

The Claim is that the Carrier violated Rule 131 when instead of using the wrecking outfit and its regularly assigned crew for the rerailment of cars at Waukegan it used a B&B crane, its operator, a section foreman, four section men and two local car inspectors. The rule is as follows:

"When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will, if necessary, accompany outfit. For wrecks or derailments within yard limits sufficient carmen will be called to perform the work."

A settlement agreement was made between the General Chairman and the Carrier's Vice President-Personnel for the payment of a four hour call to the other two local carmen, who were not used. But upon the objection of the wrecking crew at Joliet, the General Chairman requested, and Carrier assented to, the revocation of the agreement.

Waukegan is the Carrier's northern terminus. Its nearly wrecking outfit is stationed at Joliet, 75 miles south; another is stationed 44 miles farther away, at Gary, so that if either had been called it would presumably have been the Joliet outfit. But instead of calling either, the B&B crane was used with employees as

stated in the claim. The parties disagreed as to the number of employees used, but the record indicates that there were eight, which is the number of regularly assigned members of the Joliet crew. No emergency existed, and the cars were not rerailed until two days later.

The carrier alleges that it did not assemble the crew or order the B&B crane used, but that the two Waukegan carmen assigned to the derailment experienced difficulty because the end of one car was leaning against a retaining wall, noticed that the B&B crane was working nearby, and asked its operator and the section foreman for help to expedite the rerailment. This is denied by the Employees and the record contains no proof sustaining it. On the contrary, there is proof that the local carmen were told that the B&B crane and operator would be present for the purpose, and that when the carmen went to the derailment they found the crane operator, section foreman and four sectionmen already there.

The Claimants' position is that since a crane and crew were called for a derailment outside of their yard limits, and eight men were used, the entire crew of eight would have been necessary and were entitled to be called, under the first clause of Rule 131. The Carrier contends that there was no violation, and that if there had been one, the Waukegan carmen rather than the Joliet wrecking crew would have been the proper grievants, since the derailment occurred within the Waukegan yard limits.

In the latter connection, this Division has long considered that the words "yard limits" in wrecking rules means those of the regularly assigned wrecking crew. See Awards 853, 857, 1069, 1362 and 1703.

In Award 1327 the wrecking rules were essentially the same as Rule 131 except that they definitely required the regularly assigned crew to accompany the outfit, and not, as here, only "if necessary." In that case a crane other than that of the outfit had been used for a derailment outside of the wrecking crew's yard limits, and the crew's claim was sustained. This Division said:

"Based upon the facts of this case we find that under the applicable rules, the carrier had a definite responsibility to call these claimants to perform the wrecking service in question. The job necessitated the use of hoist, jacks and other tools of this craft, as well as the making of repairs to the car involved. No emergency was involved and claimants were available for assignment. A properly equipped wrecking crew was needed and the equivalent specially recruited. Under Rule 108(c) and the facts of this case, claimants were entitled to accompany this outfit, even though the carrier deemed that the nature and location of the wreck dictated the use of special hoist equipment."

We consider that the words of that award, so far as pertinent here, are correct, and that Claim 1 should be sustained. With regard to Claim 2, this Division held as follows in Award 1702:

"The penalty for work lost is the pro rata rate of the positions, that is, the rate which the occupant of the regular position to whom it belonged would have received if he had performed the work. This would eliminate all traveling and waiting time but would entitle claimants to be paid at the rate of their positions for all time paid Wrecking Engineer Frank Walters, either pro rata or overtime, while he worked with outfit No. 95008 at Armourdale. See Award 1362 to the same effect."

The record indicates that the rerailment consumed four hours, and Claim 2 should be sustained for that period on the basis outlined above, less pay already received by claimants for the period from 11:00 a.m. to 3:00 p.m. on October 29, 1962.

**A W A R D**

Claim 1 sustained.

Claim 2 sustained to the extent indicated in the Findings.

**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.