



Award No. 5003

Docket No. 4920

2-B&M-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

BOSTON AND MAINE CORPORATION

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement when Carmen R. Russel, P. DeLong, H. Nelson, E. Hardy, and J. Deveau, who are members of the regularly assigned crew, were not called to accompany the wrecking outfit when it left Boston, Massachusetts, on March 15 and 22, 1964.

2. That accordingly, the Carrier be ordered to compensate Carmen R. Russel, P. DeLong, H. Nelson, E. Hardy and J. Deveau, in the amount of ten (10) hours and thirty-five (35) minutes at the time and one-half rate for March 15, 1964, and eleven (11) hours and twenty-five (25) minutes at the time and one-half rate for March 22, 1964.

EMPLOYES' STATEMENT OF FACTS: The Boston and Maine Railroad Company, hereinafter called the carrier, maintains a wrecking outfit and a regularly assigned crew comprised of the above named claimants at Boston, Massachusetts.

On March 15, 1964, the Boston and Maine Railroad had a derailment of fifty (50) cars at South River, Massachusetts. The Boston wrecking outfit was sent to South River, Massachusetts to help the East Deerfield wrecking crew get the main line open, but the railroad refused to send the regularly assigned Boston crew with the outfit.

On March 22, 1964, the Boston wrecking outfit was again sent to South River, Massachusetts, to help rerail the remaining cars of this wreck and again the carrier refused to send the regularly assigned crew to accompany the outfit.

The wrecking outfit left Boston, Massachusetts at 8:25 P. M. on March 15, 1964, and arrived at South River, Massachusetts at 7 A. M. on March 16, 1964.

precluding the carrier from transferring any of its equipment anywhere or from renting its equipment to outsiders for their use.

POSITION OF CARRIER: Your board's attention is directed to the employees' statement of claim. The claimants specifically claim time for not being allowed to accompany the transferred wrecking outfit to the scene of the wreck on Sunday, March 15 and 22, 1964. As stated in the carrier's statement of facts, the crane was transferred to the East Deerfield car department on claim dates. It did not travel to the scene of the wreck as a combined outfit until the following day in each instance.

There is no claim whatsoever for working at the wreck, and there is no travel time claimed for returning to the claimants' headquarter point at Boston, Massachusetts.

Therefore, the issue to be decided is simply whether or not the carrier has the right to transfer a piece of its equipment to the jurisdiction of other supervision or to another department of the railroad.

At Boston there are two wrecking outfits; namely, Crane M-3365, which was transferred, and Crane M-3362, which was the existing wrecking outfit during the absence of the transferred crane; and the claimants would have manned that wrecker had any emergency occurred under the jurisdiction of the car department at Boston.

As stated earlier in this submission, the claimants are not entitled under the rules of the agreement to accompany a piece of equipment which is transferred to the jurisdiction of another department.

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.

The gist of this claim is that Carrier violated Rule 113 when it failed to call its regularly assigned wrecking crew at Boston, Massachusetts on two occasions to work on a derailment fifty miles away at South River, although it used a Boston wrecking outfit both times.

Rule 113 reads as follows:

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

Carrier does not dispute the basic facts but insists that it merely exercised its right to transfer a piece of equipment, namely the wrecking outfit,

to the jurisdiction of its East Deerfield department for the latter's use. We find Carrier's point untenable. It is not precluded, of course, from transferring equipment from one department to another but it is not free to avoid its contractual commitments. The record is clear that the outfit was dispatched from Boston for the specific purpose of helping to clear up the derailment at South River and Claimants were manifestly entitled to accompany it under the plain language and intent of Rule 113.

Claimants are entitled to be paid the difference between what they earned and the amount they would have received had they been called to accompany the wrecking outfit. The claim will be sustained to that extent. Awards 3936, 4509 and 4675.

AWARD

Claim sustained to 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 9th day of December, 1966.