



**Award No. 5166
Docket No. 4976
2-CRI&P-CM-'67**

**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. 6, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

(1) That under the current Agreement the Carrier improperly assigned section employees to perform Carmen's work of rerailing cars at Dallas, Texas on October 21, 1964.

(2) That accordingly, the Carrier be ordered to compensate Carmen H. C. Marshall, J. C. Taylor and Lois Evans 4½ hours each at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: On October 21, 1964, the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the carrier, dispatched three section laborers, A. R. Defoor, A. Anderson and F. Gaitan in Rock Island Truck No. 706 to McKinney Street, Dallas, Texas to rerail Car PRR 79803. Truck No. 706 was used to transport the above named men and rerailing equipment from Dallas Yards to McKinney Street, a distance of about four miles. These section employees worked from 5:30 A. M. to 7:30 A. M. rerailing this car.

Carmen H. C. Marshall, J. C. Taylor and Lois Evans, hereinafter referred to as the claimants, are regularly assigned members of the wrecking crew at Fort Worth, Texas and were available for this derailment.

The agreement effective October 15, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYES: The carrier maintains a repair track and a wrecking derrick and outfit at Fort Worth, Texas. The claimants are members of the assigned wrecking crew at Fort Worth, and perform all wrecking work at Dallas, Texas where it is necessary to use a wrecker.

I have instructed our local officers that where a wrecking crew is assigned, but where only a truck is used in connection with the above work, the needed men should be drawn from the wrecking crew."

This letter has no relevance in this case. A wrecker and a wrecking crew are assigned at Fort Worth. On the date in question the wrecker was not called — had it been the wrecking crew would have accompanied the outfit. On the date in question a truck was not used — had a truck been sent from Fort Worth the needed men would have been drawn from the Fort Worth wrecking crew.

The section men located at Dallas were used, but the fact they rode R.I. Truck No. 706, which is the truck assigned to them, from one point to another in Dallas to get to the derailment does not dictate a truck should have been sent from Fort Worth with carmen. The letter of September 4, 1953 has no application under the circumstances here disclosed.

The carrier cannot visualize a sustaining award here, but it should be remembered the claim here is for two hours' travel time for time not traveled — clearly an unjustified claim; one-half hour loading tools not loaded — clearly an unjustified claim; and two hours for time not worked, all at time and one-half rate even though your Board has consistently ruled only pro-rata rate is due for time not worked when a violation is proven — not contended.

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.

The claim is that Carrier should have used its regularly assigned Fort Worth wrecking crew instead of three Dallas section laborers to rerail a car at Dallas, Texas, outside yard limits.

In general, the Awards of this Board hold that, unless the wrecking outfit is utilized, a carrier is not obligated to call regularly assigned wrecking crews to clear derailments outside yard limits. (See, e.g., Awards 1757, 2049, 2209, 2792, 4190 and 5005). That the wrecking outfit was not used in the present case is undisputed.

It is not inappropriate to consider past practice in outside yard limit derailment cases, in our opinion, for the call rules are somewhat ambiguous in those situations. In the present case, the record establishes that in a signed letter of September 4, 1953, Carrier's Vice President-Labor Relations notified the General Chairman of the Organization as follows:

"Our conference re using truck instead of wrecker in connection with rerailling cars or at minor wrecks on line of road:

I have instructed our local officers that where a wrecking crew is assigned, but where only a truck is used in connection with above work, the needed men should be drawn from the wrecking crew."

While that letter certainly does not constitute an agreement, it does evidence the results of a conference between responsible representatives of management and the carmen as well as the practice followed on Carrier's property. There is no indication that the letter was cancelled, superseded or modified in any respect. A letter of this type is not so persuasive as to create in irrebuttable presumption in Petitioner's favor. (Cf Award 4541.) It is sufficient, however, to make it incumbent upon Carrier to come forward with evidence that would tend to explain away or reduce the impact of the inferences that may be fairly drawn from its contents.

Accordingly, on the basis of the record, and giving the language used in Carrier's letter of September 4, 1953 its normal and undistorted meaning, we find that where a truck is used in connection with rerailing work on this property, the needed men must be drawn from the regularly assigned wrecking crew (Cf Award 5005). There a truck was used to transport the section laborers and necessary rerailing equipment to the derailment scene. Under the circumstances, the claim will be sustained at the straight-time, but not the time and one-half, rate (see Award 4775).

AWARD

Claim sustained at the straight-time rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1967.