

Award No. 5195

Docket No. 4883

2-GM&O-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, other than Carmen were improperly used to augment the Meridian, Miss., Wrecking Crew at a derailment at Glen, Miss., December 30, 1963 and January 2, 1964.

2. That accordingly, the Carrier be ordered to additionally compensate Carmen A. E. Stewart and R. B. Price in the amount of thirteen (13) hours at the applicable overtime rate for December 30, 1963, and Carmen R. B. Price and H. L. Denton in the amount of thirteen (13) hours at the applicable overtime rate for January 2, 1964.

EMPLOYEES' STATEMENT OF FACTS: Carmen Stewart, Price and Denton, hereinafter referred to as the Claimants, are regularly assigned at Meridian, Miss., by the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the Carrier.

On the morning of December 30, 1963, one of the Carrier's freight trains became derailed and wrecked several cars at Glen, Miss., which is just south of Tupelo, Miss., some 130 miles north of Meridian, Miss. The Meridian Wrecking outfit with five crew members, and the Jackson, Tenn., Wrecking Outfit with five crew members were dispatched to the scene to clear up the wreck. A privately owned bulldozer was also secured, along with its operator, to assist in clearing up the wreck. Two Section Laborers were assigned to the Bulldozer to handle cables and make hitches and other necessary work in connection with moving freight car trucks and other wrecked equipment. These two laborers worked several days with the bulldozer but on December 30, 1963 and January 2, 1964 could be pinpointed by the Meridian Wrecking Crew. Their signed statement is attached hereto and identified as Employees' Exhibit A.

and I did not see anyone of them do anything that they have not always done at a derailment. This is the normal procedure at derailments before that time and at derailments since that time. The carmen on the two wrecking outfits did all the handling of the outriggers, hooking to the cars and such work as they normally do. The bulldozers did not do anything in the way of rerailing or picking up cars."

Attached as Carrier's Exhibit E is statement by Mr. P. E. DeWitt, General Master Mechanic, who has more than 35 years of railroad service. Mr. DeWitt states in part:

"I left the scene of the derailment shortly after the line was opened for traffic. I have been present at many derailments and have observed wrecking work being performed many times, and the work performed by Roadway men at Glen was identical to the work they always perform at wrecks. At no time did I see Roadway men performing Carmen's work."

Carrier's Exhibit F is an Affidavit from Mr. C. A. Miles, Traveling General Car Foreman. Mr. Miles has more than 40 years of railroad service. Mr. Miles states in part:

"During my more than forty years' railroad service, I have been around many derailments and actively engaged in wrecking service, and I can truthfully say that the work Roadway men performed at Glen, Mississippi derailment was just the same as the work they customarily perform at wrecks and was work incidental to their work of restoring roadway fill and rebuilding tracks."

Here the Board has Affidavits from three experienced men, who were present and observed the duties performed by various employes at Glen in clearing the wreck. The Carrier submits that this is the best evidence available to aid this Board in determining the issues here. These Affidavits conclusively show that in the minds of practical railroad men, the claims are not supported by the Agreement or past practice.

The employes have failed to submit any proof whatsoever that the Agreement or practice supports the claim that the duties performed by section laborers in clearing the wreck at Glen and repairing the track and roadbed are the exclusive duties of carmen.

Carrier urges that the claims be denied.

(Exhibits not reproduced.)

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.

A derailment at Glen, Miss. took place on December 30, 1963 and January 2, 1964. Other than Carmen were used to help the wrecking crew at the derailment. The employes want Carmen Stewart and Price to get 13 hours' pay at overtime rate for December 30, 1963, and Carmen Price and Denton to get 13 hours' pay at overtime rates for January 2, 1964. Stewart, Price and Denton are hereafter referred to as Claimants. The Gulf, Mobile and Ohio Railroad is hereafter referred to as the Carrier.

Shortly after lunch on December 30, 1963, the Jackson derrick crew got to Glen, Miss., where the wreck was, and began clearing the tracks. Later the Meridian derrick crew was ordered out and arrived at Glen, Miss. about 5:30 or 6:00 P. M., on December 30, 1963, but was not used; they left Glen, Miss.

The track men, laborers and maintenance of way men did not do anything while at work that they had not always done around a wreck.

The said trackmen, laborers and maintenance of way men were not doing Carmen's work on December 30, 1963 or January 2, 1964.

Carmen did not have the exclusive right to handle work in connection with the moving of wrecked equipment. Neither the agreement, past practice or custom, gave the Carmen such an exclusive right. Laborers, trackmen and maintenance of way men, did and could perform the work that was done by them. Carmen were not used and did not have to be used as shown above.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1967.