

Award No. 5438
Docket No. 5305
2-B&LE-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph S. Kane when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

BESSEMER AND LAKE ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That the Carrier violated the current agreement when they sent other than the regular assigned wrecking crew and derrick to load wrecked freight cars into Gondolas caused by derailments which occurred on dates of March 7th and 20th, 1965.

(2) That accordingly the Carrier be ordered to compensate the regular assigned wreck crew for said violation, namely:

Name	Occupation	Day	Date	Amount Claimed
C. Cascio	Wreck Crane Engineer (Carman)	Tuesday	March 9, 1965	8 hr. at pro rata rate
				25 min. at overtime
		Tuesday	March 23, 1965	8 hr. at pro rata wrecking rate
		Thursday	March 25, 1965	8 hr. at pro rata wrecking rate
		Tuesday	April 6, 1965	8 hr. at pro rata wrecking rate
		Friday	April 9, 1965	8 hr. at pro rata wrecking rate
		Saturday	April 10, 1965	8 hr. at pro rata wrecking rate

Also Wrecker Carmen, P. W. Williamson, L. T. Hoover, Sr., J. W. Dunlap, G. R. Webber, R. E. Tumpak, O. L. Gruber, N. J. Godinich, and R. E. Bresnan, wrecker cook (Carman Helper) for same amount on dates listed above.

Carrier, further asserts, without in any manner waiving or prejudicing its position in connection with the actual merits of the dispute, that the claim for Wrecker Cook R. E. Bresnan, who is a carman helper, is not valid. There is absolutely no provision in the schedule agreement providing for a position of wreck cook or any provision that a position of wreck cook shall be considered as a part of the wrecking crew. To the contrary, Rule 125 provides that wrecking crews shall be composed of regularly assigned carmen, and not carmen helpers. There is a position of cook which is an appointed position created by the Carrier and has been filled by various classes of employees over the years and the rate of pay for said position is not a negotiated rate. Carrier asserts that there is no "wrecking rate" applicable to Wrecker Cook R. E. Bresnan, as claimed in Employees' Statement of Claim.

On the basis of the facts submitted herein, the carrier respectfully requests that the Board render a denial award supporting the Carrier's denial of the claims in this case.

This dispute has been handled in the usual manner up to and including the chief operating officer of the Carrier as prescribed by the Railway Labor Act. All data submitted in the support of the carrier's position was presented to the employees and made a part of the particular question in dispute.

(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 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.

On March 7, 1965 a derailment occurred at Saxonburg, Pa. On March 20, 1965, another derailment occurred at Renfrew, Pa. The wrecking crew was dispatched to both locations and cleared the main line and placed damaged cars clear of the tracks. The wrecking crews then returned to Greenville, their station and major car repair facility.

Subsequently, the Maintenance of Way Department loaded the damaged cars into gondolas, using a maintenance of way Department A-58 crane and cleaned up the remaining portion of the wreck. The present claim is based on the allegation that the Carrier violated Rules 125 and 126 by having assigned other than the wrecking derrick and crew to perform the work of loading the car bodies and trucks on gondolas and cleaning up.

Rule 125, paragraph 2, reads in part as follows:

"Wrecking service is any class of work involving the use of the wrecking derrick * * *."

Rule 126 reads as follows:

"If the entire wrecking crew is not needed for any job, sufficient men should be taken to perform the necessary work."

The rule is explicit in that the determining factor in whether wrecking service is being performed on this property is not the type of work involved, but rather whether the wrecking derrick is used in the work. On the dates involved subsequent to the derailment, the wrecking derrick was not used, and the crew was not called. Thus, Rule 125 or 126 was not violated.

This Division is of the opinion that under the facts and circumstances herein Rule 125 or 126 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1968.