

**Award No. 5451  
Docket No. 5293  
2-D&RGW-MA-'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.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (Machinists)**

**THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the controlling agreement, it was improper for the Carrier to use other than Machinists to perform certain work necessary to the changing of trucks on diesel locomotive 3006 at Dell, Colorado, on April 18, 1965.

2. That accordingly the Carrier be ordered to compensate Machinist J. R. Miller in the amount of eight (8) hours' pay at the time and one-half rate of pay.

**EMPLOYEES' STATEMENT OF FACTS:** Machinist J. R. Miller, hereinafter referred to as the claimant, is employed as such by the Denver and Rio Grande Western Railroad Company, hereinafter referred to as the Carrier.

On April 18, 1965 engine 3006 while operating at Dell, Colorado, broke its left on the No. 2 power wheels and derailed. The Carrier's supervisor at Grand Junction was notified and the Wrecking outfit was dispatched to the scene.

Upon arrival at the scene of the disabled engine the wrecking crew groundmen (Carmen) were instructed by the Supervisors to remove the side springs which permitted the removal of the entire Truck from the center string and removal of the truck from beneath the engine.

The groundmen (Carmen) then proceeded as ordered to make temporary repairs. The truck binders were removed; the bolts holding the spring pack moved; the brake rigging on both sides of the truck including brake adjuster and brake shoes were removed; this then permitted the broken axle to be moved from the truck; the journal bearing boxes were removed from the broken axle and were installed on a spare pair of wheels which were brought in the wrecking outfit. The wheels were then placed in proper position in the

the railroad renders the public. Improvements in this service and economy in operating and maintenance expenses are promoted by willing cooperation between the railroad management and the voluntary organizations of its employees. When the groups responsible for better service and greater efficiency share fairly in the benefits which follow their joint efforts, improvements in the conduct and efficiency of the railroad are greatly encouraged. The parties to this agreement recognize the foregoing principles and agree to be governed by them in their relations."

For all the foregoing reasons the claim herein should be dismissed or denied.

All data in support of Carrier's position have been submitted to the Employees and made a part of the particular question in dispute. The Carrier reserves the right to answer any data not previously presented by the Employees.

Oral hearing is waived unless requested by the Employees, in which event Carrier wishes to be represented.

(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.

The Claimant was a machinist and seeks compensation for eight (8) hours at the time and one-half rate of pay for failure to be called out on a wreck, where Carmen were used to perform the work of changing trucks on diesel locomotives, which work properly belonged to machinists.

The Claimants offered Rules 41 and 46 in support of their contentions.

#### "RULE 41.

\* \* \* (b) In emergency cases, men of any class may be taken as members of the wrecking crews to perform duties consistent with their classification. Where engines are disabled, machinists and helpers, if necessary, shall accompany the wrecker and work under the direction of the wrecking foreman." \* \* \*

Rule 46 is a scope rule and describes the work of Machinists.

The claimant's position was that Engine 3006 was disabled and it was a violation of the agreement not to send a machinist to do the repair work.

The Carrier offers in support of its contentions Rules 41(b) and 41(c).

**"RULE 41.**

(b) In emergency cases, men of any class may be taken as members of the wrecking crews to perform duties consistent with their classification. \* \* \*

(c) When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. \* \* \*

Furthermore, no trucks were changed on the diesel engine, but the traction motor and power wheel unit was replaced with idler wheels in order to move the engine. The original claim presented by the Local Chairman stated: " \* \* \* No. 2 wheels were changed by other than machinist \* \* \*." Thus a variance between the claim and the proof.

Rule 31 was violated as the claim was not presented on the property to the authorized carrier representative. The claim in fact was made by the local chairman to the Master Mechanic and the General Foreman, rather than the Division Locomotive Foreman. In addition, subsequent information and facts acquired by the claimants after a reinvestigation of the claim should have been presented within 60 days of the grievance and not as here presented approximately 10 months or more after the occurrence and several months after the carrier had declined the appeal.

The Board is of the opinion that the procedural defects in the claim make it impossible to determine the basic issue in the dispute: Whether the work performed was Machinist work under the rules? The original claim was that No. 2 wheels were changed. The claim before this Board was for changing trucks. The proof indicated more complete repairs were done at the scene of the wreck and no trucks were changed.

Rule 31 states:

"1(a) All claims or grievances must be presented in writing by or on behalf of the employees, involved, to the officer of the Carrier authorized to receive the same, within 60 days from the date of the occurrence on which the claim or grievance is based."

This procedure was not followed and all the facts in the dispute were not before the parties at the initiation of the claim.

Thus the question of whether the work performed was done by others than machinist is not before the Board.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION**

**ATTEST: Charles C. McCarthy  
Executive Secretary**

Dated at Chicago, Illinois, this 3rd day of June, 1968.

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