

**Award No. 5549
Docket No. 5406
2-MKT-CM-'68**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling agreement when it failed to call a sufficient number of the regularly assigned wrecking crew at Ray Yard, Denison, Texas, to accompany the outfit when the wrecker engineer was sent to perform service in connection with derailment at Fayetteville, Texas on January 11, 1966 through January 14, 1966.

2. That accordingly the Carrier be ordered to compensate the following members of the Ray Wrecking Crew:

L. C. Leverette	Lead Wrecker Man
J. M. Wheeler	Ground Crew Member
C. T. Singleton	Ground Crew Member
V. A. Whitten	Ground Crew Member
W. T. Coker	Ground Crew Member

in the amount they would have earned had they been called to perform this wrecking service for such violation.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains a 250-ton diesel wrecker and equipment at Ray Yard and the above-mentioned members of the crew, hereinafter referred to as the claimants, are carmen employed on the repair track Monday through Friday.

On January 11, 1966, at 9:00 A.M., the outfit with the regularly assigned derrick engineer, were dispatched for wrecking service in connection with a derailment near Fayetteville, Texas. The remainder of the regularly assigned crew were on duty at that time on the repair track were not called to accompany the engineer and outfit, but, instead, members of a crew regularly assigned to a wrecking outfit stationed at Waco, Texas, were

The fact that the Claimants were fully employed on the four days in question has not been given consideration by the Organization in perfecting their claim, and the claim as presented represents a demand for a double payment or penalty to the extent of the time worked and paid for by the Claimants. In other words, assuming, arguendo, that Carrier was required to call these men for the work of performing wrecking service at Fayetteville, and did call them for this work, then it would have been a physical impossibility for them to have accompanied the wrecking derrick to Fayetteville and performed the work, and at the same time perform the work of the regular assignments held by each of them at Ray Yard, Denison, Texas.

In these circumstances, the Carrier would be clearly entitled to take credit against the claim made for the amount of time worked by each of the claimants on the claim dates if it had violated the Agreement in this case.

But in the Carrier's opinion, the agreement rules were strictly and literally complied with, and there was no violation of the agreement that could give rise to any claim; accordingly, this claim should be denied.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company denies each and every, all and singular, the allegations of the organization and employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons the Missouri-Kansas-Texas Railroad Company respectfully requests the Second Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Company such other relief to which it may be entitled.

(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.

We do not think the facts involved in this dispute are in hopeless conflict. Neither do we accept the argument of the carrier that the wrecking "outfit" was not used outside yard limits, as contemplated by Rule 73(e). We do, however, recognize the inadequacy of the record in regard to what would have constituted "a sufficient number of the regularly assigned crew" under the circumstances existing which gave cause for the claim now before us. (Emphasis ours.)

We believe, therefore, that the integrity of the contract will be preserved and fairness to the parties will best be served, by awarding each of the claimants the difference between the hours worked by the wrecking engineer and the hours worked by the claimants at the pro rata rate since the claim is for work not performed.

AWARD

Claim to be disposed of as per the above findings.

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

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

Dated at Chicago, Illinois, this 30th day of October, 1968.