



Award No. 5678

Docket No. 5563

2-DM&IR-CM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 71, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement when Carmen H. Donahue, Richard D. Brazerol, T. Leland, Russell O. Brazerol, W. J. Anderson, H. A. Osse and Carman Helper B. C. McKagan were not called to accompany the wrecking outfit when it left Proctor, Minnesota at 5:30 P. M. on April 11, 1966 and when they were not allowed to accompany the wrecking outfit on its return to Proctor, Minnesota on April 15, 1966 at 4:15 P. M.

2. That accordingly the Carrier be ordered to compensate the aforesaid employees thirty-six and one quarter ($36\frac{1}{4}$) hours each at pro rata rate for the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: The Duluth, Missabe and Iron Range Railway Company, hereinafter referred to as the Carrier, maintains a wrecking outfit headquartered at Proctor, Minnesota. Carmen C. H. Donahue, Richard D. Brazerol, W. Anderson, H. Osse, T. Leland, Russell O. Brazerol and Carman Helper B. C. McKagan, hereinafter referred to as the claimants, are assigned to Carrier's Shop at Proctor and are members of the regular assigned wrecking crew.

On April 11, 1966 a derailment occurred at Aurora, Minnesota. The wrecking outfit was called out and left Proctor yards at 5:30 P. M. on the same date and arrived at the scene of the derailment on April 12, 1966. The regularly assigned wrecking crew did not accompany the outfit, but were transported to the scene of the derailment by automobile after being called for wrecking service at 5:00 P. M. on April 12, 1966. The claimants are each seeking twenty-three and one-half ($23\frac{1}{2}$) hours of compensation for not being called to accompany the wrecking outfit to the scene of the derailment.

The wrecking crew completed their assignment at the scene of the derailment on April 14, 1966 and departed at 2:15 P. M. that day for their home

THIRD DIVISION AWARD 2436

"When a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself."

Also see Third Division Awards 507, 1257, 1397, 4493 and many other later awards.

The claimants in the instant case request that each be paid 36¼ hours, the time the wrecking equipment was in transit to and from the site of the derailment at Aurora, Minnesota. The time involved in traveling to and from the derailment by automobile would not exceed three hours. There is no doubt as to which mode of transportation is most economical and most efficient. Accompaniment of the wrecking crew with the wrecking outfit would increase the cost tenfold.

It has been well settled by the awards of all the divisions of the Board that it is the duty of management to operate its railroad with efficiency and economy.

After more than 20 years of acceptance of the interpretation and application of Rule 81, that wrecking crews do not have to accompany the outfit, the Employees now are attempting to disregard the intent and application of Rule 81. For the Board to sustain the position of the Employees in this case would only breed inefficiency and subject the railroad to operational costs.

In conclusion, the Carrier submits that the Employees' claim is without merit for the following reasons:

1. When Rule 81 was negotiated, it was not intended that wrecking crews had to accompany the wrecking outfit.
2. The practice of long standing, over 20 years, that the employees do not have to physically accompany the wrecking outfit while in transit to the site of wrecks is unquestionable proof of the intent and application of Rule 81 on this property.
3. The instant claims are the first submitted by the Employees, which is another clear indication they are now attempting to disregard the intent and application of Rule 81, which has been in effect for many years.

In view of the facts and circumstances shown by the Carrier, the Carrier respectfully requests that your Honorable Board deny the claim of the Employees.

(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 employees 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.

On April 11, 1966, a derailment occurred at Aurora, Minnesota. The wrecking outfit was called out and left Proctor Yards at 5:30 P.M., on that date and arrived at the scene of the derailment on April 12, 1966. Claimants, assigned as wrecking crew, did not accompany the outfit, but were transported to the scene of derailment by automobile. They were called for wrecking service at 5:00 P.M. on April 12, 1966, and departed after completing their assignment on April 14, 1966, at 2:15 P.M. The wrecking outfit left Aurora and arrived at Proctor Yards at 4:15 P.M. on April 15, 1966. The Organization contends the Carrier violated Rule 81 of the current Agreement in that it failed to permit Claimants to accompany the wrecking outfit while in transit to and from the scene of derailment outside of yard limits. The pertinent part of Rule 81 is:

"RULE 81.

(a) Regularly assigned crews, including engineers and firemen, will be composed of carmen and helpers where sufficient men are available and will be paid for such service under Rule 11. Wrecking engineers and firemen must be able to secure proper state licenses. Meals and lodging will be provided by the Carrier while crews are on duty in wrecking service.

(b) When wrecking crews are called for wrecks or derailments outside of yards limits, a sufficient number of the regular assigned crew will accompany the outfit. For wrecks or derailments within yards limits, sufficient carmen will be called to perform the work."

The Organization also contends that Rule 11 was violated, which is:

"RULE 11.

Road and Wrecking Service (a) Except as provided in Rule 6 (f), and employe regularly assigned to work at a shop, engine house, repair track, or inspection point when called for road or wrecking service away from such point will be paid for all time working, waiting, or traveling from the time ordered to report for duty at home station until his return. Straight time rates to be paid for home station straight time hours and overtime rates for home station overtime hours whether working, waiting or traveling."

Carrier contends that the wrecking outfit was deadheaded to and from the scene of derailment and that, therefore, Rule 81(b) was not violated. The Board finds that in view of the overwhelming number of awards sustaining the Organization's contention in this case, Carrier's contention is untenable. To further strengthen the Organization's position in this matter, this Board finds that on May 27, 1952, a letter was addressed to Car Foremen Isakson, B. A. Swardstrom, C. B. Case and T. Soderstrom by T. J. Clarke, General Car Foreman, which sets out the interpretation the Carrier on this property has placed on Rule 81. The pertinent instruction issued in this communication is as follows:

“In the event that it becomes necessary to dispatch the wrecking equipment from either Proctor or Two Harbors for any purpose, a sufficient number of the regularly assigned wrecking crew at either of these terminals must be dispatched with the equipment whether or not this equipment is to be used on the line or road or in some yard. You cannot dispatch the wrecking equipment with a skeleton crew only and augment it by the use of available carmen in some northern yard regardless of the fact that carmen may be available in such yard.”

This Board finds that the word “accompany”, as used in Rule 81, means “to go along with someone or something” as defined by Webster’s New Collegiate Dictionary, Second Edition. This Board also finds that Awards 4910, 4932, 4785, 4402, and 5003 uphold the contention of the Organization in this dispute. Therefore, this claim will be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1969.