



Award No. 6218
Docket No. 6023
2-C&S-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

COLORADO AND SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Colorado and Southern Railway Company violated the provisions of the controlling agreement on January 15, 1969, when the Carrier augmented one Carman with six section men and two section foremen, Mr. Warren and Mr. Garder, also one Division Foreman, Mr. M. I. Smith, who under the direction of an Official of the Carrier assisted the carman in rerailling five derailed cars at a siding designated as Shellback, Wyoming.

2. That accordingly the Carrier be ordered to compensate the carmen whose names appear in the following list, at the applicable rate for the number of hours indicated in connection with their respective names:

R. Dietz - six (6) hours at pro rata rate;

C. E. Hendricks - six (6) hours at pro rata rate;

J. L. Wallace - four and three-fourth (4 $\frac{3}{4}$) hours at pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: It is submitted that the Colorado and Southern Railway Company, hereinafter referred to as the carrier, maintains repair track facilities at Cheyenne, Wyoming, which is also a division point on the carrier's line of road. Two regularly assigned carmen are employed at this point: Mr. J. L. Wallace, assigned Monday through Friday 11:30 A. M. to 8:00 P. M., and Mr. C. R. Wilson, assigned Wednesday through Sunday, 9:00 A. M. to 5:30 P. M. Two other carmen, Mr. R. Dietz and Mr. C. E. Hendricks, while furloughed, contractually hold seniority at this point while temporarily employed as carmen by this carrier at the Denver, Colorado Shops, meanwhile maintaining their respective residences at Cheyenne, Wyoming.

The organization did not deny the record of this practice for the past 30 years, which has existed prior and subsequent to the effective date of the current agreement.

The circumstances in this claim are not unlike those in denial Award 5768, Second Division, National Railroad Adjustment Board. There, the majority found, in part:

“ . . . Carrier on April 11, 1966, assigned three Carmen at Harlowton, 73 miles from Heath, who were members of the Harlowton wrecking crew, to travel by truck from that point to Heath to perform service in rerailling the hopper. The wrecking outfit — wrecking derrick and outfit cars — remained at Harlowton.

. . . Carrier used a crane operated by an employe covered by the Maintenance of Way agreement to assist in the rerailling.

. . . It has been established by the case law of this Board that wrecking service is not exclusively reserved to Carmen absent a contractual commitment. See, for example, Awards No. 1322, 2208 and 5306.

. . . We find no contractual bar to the operation of the crane by a Maintenance of Way employe in light of the facts of record; provisions of Carmen's Agreement; and, the established principle that wrecking service is not reserved, exclusively, to Carmen in the absence of expressed contractual obligation. We will deny the Claim.”

As a result of the foregoing, the carrier respectfully requests that this claim be denied.

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 wreck occurred about 24 miles north of Cheyenne, Wyoming. One Carman was dispatched to reraill five cars. A Burro Crane and six section men, with two section foremen were also sent to assist the Carman. They accomplished their assignment in about an hour and one-half.

The wreck was not within Carrier's yard limits. That being the case, derailment work does not belong exclusively with Carmen. See Award No. 6177. No wrecking outfit was used. It also is well established by Awards of this Division that “when a wrecking outfit is not called, the rerailling of locomotives and cars is not the exclusive work of carmen.” Award No. 1322. See also Awards 1482, 1757, 1763, 2049, 2208 and 5306.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1971.