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Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6558
SECOND DIVISION Docket No. 6386
2-PT-CM-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: System Federation No. 18, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)

Maine Central Railroad Company
Portland Terminal Company

Dispute: Claim of Employes:

1. That the Portland Terminal Company violated the provisions of the current agreement, namely, Rule No. 97, on October 21 and 22, 1971 and November 2, 3, and 4, 1971, while engaged in wrecking service at Clinton, Maine on the Portland to Bangor Main Line.

2. That accordingly, the Portland Terminal Company be ordered to additionally compensate Carman H. A. Sampson, crane operator, regular assigned member of the Rigby wrecking crew, in the amount of five (5) hours and forty-five (45) minutes at the carmen's time and one-half rate of pay for October 21 and 22, 1971, and twenty-six (26) hours and forty (40) minutes at the carmen's time and one-half and double time rates of pay under Rule 7 and 4 of the Agreement for November 2, 3, and 4, 1971.

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.

Claimant is the regular crane-operator on the wrecking crew headquartered at the Carrier's Rigby Yard in South Portland, Maine. On October 20, 1971 a derailment occurred on the Maine Central Railroad Company's line about ninety miles from South Portland. The Maine Central sent two wrecking crews and cranes to the site of the derailment; on October 21st one of the two cranes was derailed, damaged and rendered inoperative. At 10:30 P.M. on October 21, 1971 the crane and idler car of the Rigby wrecking outfit departed for the scene of the wreck, on a loan basis, to assist the Maine Central wrecking personnel in clearing up the derailment. Since the Rigby crane was larger and different than the other Maine Central equipment, claimant was

instructed to travel by automobile and report at Waterville, Maine (eighty miles distant) at 4:30 A.M. on October 22nd to meet and board the wrecker train. Claimant worked at clearing the wreck until 7:30 P.M. on November 2, 1971 when he was instructed to drive back to his home point, which he did, arriving at 10:00 P.M. November 2nd. The wrecker unit arrived back at the Rigby yard, unaccompanied, at 4:40 P.M. on November 4, 1971.

Petitioner claims Carrier violated the provisions of Rule 97 and the claim is for the time the wrecking outfit left Rigby yard until the outfit returned on November 4th (less the pay received by Claimant). A claim in behalf of the remainder of the wrecking crew was originally part of this dispute but was separated on the property and is being handled in Docket number 6379. Rule 97 reads:

> "RULE 97. Make Up of Wrecking Crews. When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

Carrier argues that since the wreck in question was outside the territory of the Rigby wrecking crew and in fact on another railroad, the provisions of the agreement are not applicable. It is further contended that the Carrier may use its equipment as it sees fit, without any violation of the rules, per se. Carrier also stated, in its brief, that claimant has no contractual right to perform wrecking service, or any other work, on the Maine Central. In support of this position, Carrier cites Award 2213 and a series of other awards based on the reasoning expressed in that award.

An examination of the facts in Award 2213 indicates that the claim was in behalf of those members of the wrecking crew who did not accompany the outfit to a derailment on another railroad; the outfit was accompanied by the engineer and the lead carman. The principle established in that Award was to the effect that members of a wrecking crew have no contractual right to work on derailments which are not on Carrier's property, even though the wrecking outfit may be used. This principle has been upheld in a long series of awards, and we concur in the expressed reasoning. However, in the dispute before us the issue is not that of the crew's right to accompany the outfit to a wreck off the property. In this case the crane operator was instructed by this Carrier to proceed to the wreck and operate the wrecking crane, and continued in the employ of this Carrier during the period in question. He functioned under the terms of the Agreement in terms of pay and automobile mileage during the rerailing, and in fact in all respects except the one in question. None of the Awards cited by Carrier deal with this factual situation. We cannot accept the reasoning implicit in Carrier's actions and argument, that the Agreement is only partly applicable. We find that when an employee, under the direction of the Carrier, is instructed to perform his regular duties, even when those functions are performed on another railroad, he must be compensated in accordance with the Rules of the applicable Agreement.

A W A R D

Claim sustained.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of July, 1973.