

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

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That the Burlington-Northern, Incorporated violated Rules 7 and 86 of the controlling Agreement in effect on the Burlington-Northern, Incorporated, when they failed to call the regular assigned wrecking crew for service on January 12 and 13, 1973.
2. That accordingly the Burlington-Northern, Incorporated be ordered to additionally compensate Sioux City Carmen C. Hacker and J. Skuya in the amounts of nineteen (19) hours each at the time and one-half ($1\frac{1}{2}$) rate for January 12, 1973 and further compensate the above named carmen each in the amount of twenty-one (21) hours at the straight (1) time rate for January 13, 1973.

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.

Claimants are two Carmen with bid jobs as members of the Sioux City wrecking crew, the basis of their claims being that they were not allowed to accompany the Sioux City wrecking derrick, its derrick engineer, its wrecking foreman and its cook, who were utilized as an entity on January 12th and 13th in the transferring of twenty-seven wrecked cars from the Walthill, Nebraska wreck of January 7 to the Carrier's shops in Lincoln, Nebraska.

The Carrier contends that the use of the Sioux City derrick, outfit, engineer, foreman and cook was not used for "wrecking service" (Carrier's Exhibit No. 9). Carrier contends that Rule 86(b) applies only to the

utilization of a wrecking crew for "wrecks" or "derailments" outside of yard limits; and the Carrier contends such was not the situation in the case at hand.

The Carrier has the managerial prerogative to deal with situations such as the major Walthill wreck as it sees fit subject only to its contractual obligations to its employees. No rule of the parties agreement requires the Carrier to have a wrecking derrick accompany rerailed or damaged cars to the Carrier's shops. However, Rule 86(b) requires:

"When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit."

The Carrier had the usual option of its "on call" wrecking outfits which could have been called upon by Carrier if the damaged cars from the Walthill wreck again derailed enroute to the Carrier's shops. Instead, however, the risk of a further wreck or derailment was sufficiently imminent that the Carrier dispatched its Sioux City wrecking derrick, outfit and a partial crew on the claimed dates and accordingly compensated them at the wrecking service rate of pay (Carrier does not rebut this pay issue with probative evidence). We find that the work in connection with the Walthill wreck or derailment was not concluded as of January 12. It is evident from the entirety of the record that in the Carrier's judgment further work was necessary in connection with the Walthill wreck after the twenty-seven cars were rerailed and that was the calling and resulting presence of the Sioux City derrick, outfit and partial crew to escort the damaged cars to its shops. We find that the Sioux City wrecking crew was called in regard to the wreck or derailment at Walthill, and Walthill being outside yard limits the Carmen were entitled to "accompany" it under Rule 86(b). See Awards 5678, 4932 and 4910 as to meaning of word "accompany".

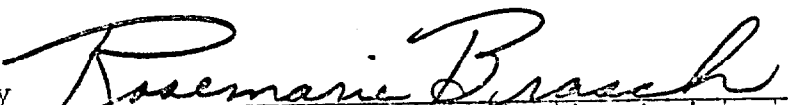
We shall sustain the claim. However, pay for service not performed is to be at the straight time rate.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of April, 1975.