

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to compensate Sectionmen Larry Bafico, Ervin Lippert, David Lewis, and Howard Tate at the Carmen's rate for services performed in connection with the rerailling of a Diesel locomotive on July 1, 1953;

(2) Each of the Claimant Sectionmen now be allowed the difference between what they were paid at the Sectionmen's rate of pay and what they should have received at the Carmen's rate of pay while engaged in the performance of the services referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant employees are employed and hold seniority as sectionmen and are regularly assigned to Section No. 33, Peninsula Junction, Oregon, regularly working under the direction and supervision of Section Foreman F. Klimt.

On the evening of July 1, 1953, a Diesel locomotive was derailed at or near Champ, which required wrecking services to be performed in rerailling the locomotive and a carman's wrecking crew was called to perform this service.

The Claimant employees were also called at 8:00 P. M. in order to perform any track repair work necessary account of the derailment. However, it developed that an insufficient number of carmen had been called to perform the necessary wrecking services and the Claimant employees were therefore directed by Mr. G. Marlin, General Foreman in the Maintenance of Way Department, to report to and work as directed by Mr. H. T. Tone, a Mechanical Department Foreman.

The Claimant employees protested being required to perform Carmen's work unless compensated therefor at Carmen's rate of pay, and were advised that the nature and character of the emergency made it imperative that they be pressed into performing wrecking service and that the rate of pay would be discussed later. They were given the ultimatum of complying with General Foreman Marlin's instructions or to "go home" as discharged or resigned employees.

The Claimants were not required to spend "four hours or more" in assisting the carmen in re-railing operations by handling the blocking and transverse plates, but only some three hours and a half. Thus, even if it could be said that the handling of the blocking and transverse plates in connection with re-railing operations by carmen would constitute such work "paid at a higher rate of pay," it still would not entitle the Claimants to the additional rate claimed herein. Therefore, for yet this further reason, there is no basis for this claim.

The Claimants, on the date in question, did not perform any "work paid at a higher rate of pay," and the only work performed by them which could even reasonably be contended to have constituted such work, did not consume "four hours or more." There is, thus, no basis for the allowance of any additional rate. For these reasons the claim, as presented herein, is unfounded.

All information and data contained in this Response to Notice of Ex Parte Submission are a matter of record or are known by the Organization.

The claim should be denied.

(Exhibits not reproduced)

OPINION OF BOARD: On the evening of July 1, 1953, a diesel locomotive was derailed near Champ Crossing. A wrecking crew was called to the scene and in addition the four claimants, sectionmen, along with their section foreman, were called at 8:00 P. M. to assist in track clearance and repair. These men were regularly assigned to Section No. 33, Peninsula Junction, Oregon, and had completed their regular work and returned to their homes at the time they were called. They picked up a push car at Champ Crossing and loaded it with blocking, jacks, tools and other wrecking equipment from a truck parked on a nearby highway. They then transported it in the push car to the site of the derailment.

Upon arrival at the site of the derailment, they started a fire and sat down. Subsequently, they were instructed to help the carmen. There is a dispute of fact as to just what help was rendered by the claimants. According to them, they placed blocking on both sides of the locomotives, set and operated jacks in conjunction with other jacks operated by carmen, handled transverse plates, and performed other wrecking duties as directed by mechanical department foreman Tone in connection with the rerailing of the locomotive. After the locomotive was rerailed, they gathered up the wrecking equipment, loaded it on a push car, transported it back to the highway and loaded it onto a waiting truck. According to Carrier, the claimants did not at any time handle or help with the operation of the air jacks, but only helped with the transverse plates. Carrier agrees that claimants hauled the jacks, blocking, etc. to and from the point of derailment.

According to claimants, they were called at 8:00 P. M. on July 1 and were released from service at 5:00 A. M. on July 2, a total of nine hours. According to Carrier, they spent 45 minutes going to and from work, 1½ hours hauling and returning the jacks, blocking, etc., 1½ hours sitting around the fire and 3½ hours assisting carmen in rerailing operations—a total of 7½ hours.

The claim is that the four employes were entitled to be paid at the carmen's rate of pay instead of the sectionmen's rate of pay for the service performed on the dates involved, and that they now be allowed the difference between the two rates.

The claim is based upon Rule 14 of Article 2 of the agreement. This rule is entitled Temporary Assignments and reads as follows:

"An employe temporarily assigned four hours or more in one day to work paid at a higher rate of pay, will be allowed the higher rate of pay for the entire day. If temporarily assigned to work paid at a lower rate, his rate of pay will not be reduced. This does not apply in reduction of force."

Claimants contend that their entire assignment in connection with the rerailling of the locomotive was carmen's work and they are entitled to the higher rate of pay under rule 14.

Carrier contends that none of the work performed by Claimants was carmen's work but that it was work customarily performed on this property by sectionmen. In any event, according to Carrier, the transporting of the equipment to and from the site of the rerailling was clearly work of the same nature as usually performed by sectionmen, and the only work which might be argued to be carmen's work was the actual assistance to the carmen in rerailling the locomotive. Since, according to Carrier, claimants were engaged in this work for only $3\frac{1}{2}$ hours, they do not qualify under the above rule which requires 4 hours of work at the higher rate.

The question of whether sectionmen may be required to render assistance in rerailling operations at their regular rate of pay, or whether under rules similar to rule 14 in this agreement they are entitled to the higher rate of pay, has been before this Division on a number of occasions. The question of whether rerailling locomotives is carmen's work under agreements between the Carmen's Organization and various Carriers has also been decided in a number of Second Division awards. These awards do not afford a clear-cut answer to the question, differing results having been reached in cases on each Division under differing circumstances.

In Second Division awards 425, 1322 and 1482, cited by Carrier, claims were made by wrecking crews that they should have been called to perform wrecking service on occasions when the Carrier did not call wrecking crews but assigned other employes to perform rerailling operations. In Award 425 the rerailling work was done by the train and engine crews. In Award 1322, the rerailling was accomplished by sectionmen placing frogs two or four times and the pulling power of the locomotives manned by its regular crew. In Award 1482, the rerailling was done by sectionmen. In each of these cases, the claim of the carmen was denied. Each of these cases differs from the case at hand in that no wrecking crew was used at all. In Award No. 1482, a particular point is made that it is only when a wrecker is required that all wrecking work is assigned to carmen; and that where a wrecker is not called or needed, other employes than carmen may properly reraill locomotives and cars by the use of jacks, frogs, reraillers, and similar expedients.

In Third Division Award No. 584, also cited by Carrier, the facts are closer to the facts in this case. There, the wrecker was called, and section employes were required to perform service in connection with clearing the wreck. The service consisted of carrying the derrick cable and hook from the derrick to members of the wrecking crew located at one of the derailed cars, and carrying blocks and crossties from the wrecking equipment to members of the wrecking crew. Claim was made under a rule similar to rule 14 in this case and it was denied by the Division without a referee. The Opinion is very brief, the only reason given being that "at least some of the work described has been performed in the past by section forces along with their other duties, including repairing tracks at derailments."

On the other hand, in Second Division Award No. 1126, where sectionmen were called to reraill a locomotive by the use of blocks and reraillers, the claims of carmen were sustained on the ground that this was wrecking work and wrecking work belongs to carmen. In Third Division Award 2095, a section crew was ordered to accompany a wrecking crew to a derailment and the sectionmen assisted in unloading track tools used at the derailment, and in setting jacks, jacking up and blocking the car. The sectionmen claimed carmen's pay under a rule similar to rule 14. The claim was sustained, the Board holding that the work done was carmen helper's work, despite the fact that sectionmen had done similar work at sectionmen's pay on the property in many instances in the past. In Third Division Award No. 4511, Carrier called three carmen and five sectionmen to reraill a car. The sectionmen carried and placed the necessary blocking and jacks, assisted in operating the jacks, and generally helped the carmen in rerailling the derailed car. It was held that this was carmen's work and the claim was sustained.

In Third Division Award No. 5606, Carrier sent a machinist and machinist helper to repair an engine which had broken down. Sectionmen were used to transport the tools and equipment of the machinist and his helper by motorcar and trailer. The sectionmen also assisted in the loading and unloading of these tools, in the loading and unloading of driving tires, loaded rods on back of tank of engine and helped place jacks under engine. Claim was made by the sectionmen for machinist helper's rate of pay under a rule similar to rule 14. Claim was sustained and it was pointed out in the Opinion that the fact that much of the work was strictly in the common labor category was not fatal to the claim.

It can be seen from the above cases that the decisions as to whether sectionmen who assist in rerailing cars and locomotives are performing carmen's work have gone both ways, depending upon the circumstances of each case. In this case, a wrecking crew was sent to the derailment. Claimants were also sent, according to Carrier's statement "to assist in track clearance and repair." However, all of the service performed by claimants, from the time they went on duty until the time they were released, was in aid of the wrecking crew. They did no track repair of any kind. Despite the fact that there is evidence in the record that sectionmen have hauled and handled equipment and material to be used in rerailing or other track clearing operations following derailments and accidents on this property, we feel that in the circumstances of this case, the work done by the claimants cannot be broken down into component parts as suggested by Carrier. They were assigned to assist the wrecking crew and they did this during the entire time of their temporary service. We do not hold that sectionmen may not under any circumstances render assistance in the rerailing of cars at their regular rate of pay; however, the particular facts and circumstances of this case, considered in the light of the more recent awards of this Division, cited above, lead us to find that claimants here are entitled to the higher rate of pay under rule 14.

The higher rate of pay requested in the claim is the carmen's rate. However, as in Awards Nos. 2095 and 5606, it appears that the proper rate of pay for the work performed is not carmen's pay but carmen helper's pay. Accordingly, the claim is sustained for the difference between what the claimants were actually paid at the sectionmen's rate of pay and what they would have received if paid for the same time at the carmen helper's rate of pay.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1956.