

**Award No. 7647**

**Docket No. MW-7268**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John Day Larkin, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE TEXAS AND PACIFIC RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it assigned Section Laborers R. E. Rich, Jr., Jose Arrendondo, and Henry Spencer to duties in wrecking service on February 4, 1953, and refused to compensate them at the carman's rate of pay for the wrecking services performed;

(2) Messrs. J. E. Rich Jr., Jose Arrendondo, and Henry Spencer each be paid the difference between what they were paid at the section laborer's rate of pay and what they should have been paid at the carman's rate of pay for the time each consumed in performing the services referred to in Part (1) of this claim.

(Claimant Rich, 4½ hours; other two Claimants 6½ hours each).

**EMPLOYES' STATEMENT OF FACTS:** Early on the morning of February 4, 1953, Texas and Pacific Engine No. 1114 was operated over a derail in derailing position, causing the locomotive to be entirely derailed and in addition thereto, the east end of Car G.T.W. 470579. This derailment occurred on the east end of Yard Track No. 4 and on the section territory identified as Section No. 237, Fort Worth, Texas, under the jurisdiction of Section Foreman G. T. Western.

Consequently, a number of carmen were called to perform the necessary and required wrecking services under the direction and supervision of General Car Foreman J. T. Lunsford. Section Foreman G. T. Western was also called and he in turn called Section Laborers R. E. Rich, Jr., Jose Arrendondo, and Henry Spencer at 3:00 A. M., February 4, 1953.

Upon arrival at the site of the derailment, Section Foreman G. T. Western immediately observed that no track work could be performed until the engine and car was rerailed and he therefore advised General Car Foreman, Mr. J. T. Lunsford, that he (Western) would release the three aforementioned section laborers and instruct them to return to their respective homes.

General Car Foreman Lunsford then advised that he would require the services of the section laborers in connection with the wrecking services to be performed. He was then advised by Section Foreman Western that if the

been performed throughout the years by classes within the maintenance of way department." Page 5505.

Certainly it would injure the Brotherhood, as well as the Carrier, if the Carrier were required to pay carmen's wages as claimed here, for all work done at the scene of a wreck or derailment, regardless of the character or purpose of the work. Can this Board believe that either the Carrier or the Brotherhood of Maintenance of Way Employees intended to make a contract which would hurt them both simultaneously? What argument could show more conclusively that the Maintenance of Way contract was not intended to mean what the Brotherhood contends it means in this case?

The Carrier sincerely hopes that the Brotherhood has not become so devoted to doing battle against railroads, that it will persist in its efforts in this case, even to the extent of inflicting injury on itself while injuring the Carrier. The Carrier hopes that the Brotherhood of Maintenance of Way Employees will not keep trying to cut off its nose to spite its face.

Therefore, the Carrier again suggests that the Organization withdraw this claim.

For the reasons stated, the Carrier requests the Board to deny the claim, if the Brotherhood does not withdraw it.

All known relevant argumentative facts and documentary evidence are included herein, but the Carrier requests permission to submit such additional evidence and argument as may appear appropriate after it has seen a copy of the submission by the Organization.

All data submitted in support of Carrier's position has been presented to the employees or duly authorized representative thereof and made a part of the particular question in dispute.

**OPINION OF BOARD:** At about 2:25 A. M., February 4, 1953, Texas & Pacific Engine No. 1114 and Box Car GTW 470579 were derailed at Signal No. 45 on the north depot lead to the Forth Worth Passenger Station. Wreck Foreman J. F. Harkrider and four wreckmen were called and began re-railing operations at 2:30 A. M. General Car Foreman J. T. Lunsford and a limited number of Carmen were called to the scene to perform the necessary wrecking service. Since such derailments generally cause damage to the tracks, the Carrier also called Section Foreman G. T. Western and three Section Laborers: Jose Arrendondo, Robert E. Rich, Jr., and Henry Spencer. The latter three are the Claimants in this case. They reached the scene of the accident at 3 A. M.

Upon arriving, Section Foreman G. T. Western observed that there was little, if any, track work to be performed and such as might be necessary could not be done until the rerailing was completed. He, therefore, announced to Foreman Lunsford that he would release his three Section Laborers and instruct them to return to their homes. Foreman Lunsford stated that he would require the services of the Section laborers in connection with the wrecking service to be performed. Section Foreman Western reminded him that if their services were so utilized, they would have to be compensated at the carman's rate. The record indicates that Foreman Lunsford stated that he was not concerned with the rate of pay, but that he needed additional manpower and the men would be used.

The parties are in dispute as to the nature of the work performed by Claimants while the rerailing was in process. However, it is clear from the record that they performed no track work during the period in question. Whatever the work performed, it was not the work of Section Laborers. And according to the Composite Service Rule (Article 25 of the parties' Agreement of September 1, 1949),

"An employe assigned to work on a higher rated position thirty (30) minutes or more, but less than one (1) hour, will be allowed the higher rate for the full hour, and thereafter will be paid the higher rate on the minute basis for the full time worked on the higher rated position."

Since the rerailing of locomotives and cars in this case was carmen's work, and that was the work being performed during the early morning hours of February 4, 1953, at the place where the services of the Claimants were required, we can only conclude that the proper rate of pay was the carman's rate. In failing to accept the advice of the Section Foreman to release Claimants and send them home, the Carrier became obligated to compensate them at the higher rate.

The work performed by the Claimants, whatever its nature, was so integrated with and complementary to the work performed by the Carmen that it is a most reasonable conclusion that they were covered by the Composite Service Rule. The claim has merit and must be sustained. (See Awards 5606; 2703; 3489; 4139; 4190; 4511; 5095; and 7587, and others cited).

**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

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February, 1957.