

Award No. 1482

Docket No. 1397

2-L&N-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That the carrier on November 19, 1949, supplanted the Mobile wrecking crew with maintenance of way forces, in violation of the current agreement, to perform wrecking service at Pascagoula, Mississippi.

2—That accordingly the carrier be ordered to additionally compensate the entire Mobile wrecking crew for all time worked in wrecking service (6 hours) by maintenance of way employees, plus (4 hours) necessary traveling time, or ten (10) hours at time and one-half carmen's rate, each.

EMPLOYES' STATEMENT OF FACTS: There is a regularly assigned wrecking crew maintained at Mobile (Sibert shops), Alabama composed of Carmen C. C. DeLoach, J. C. McIntyre, A. T. Williams, W. G. Malone, and W. M. Lisenba, whose regular assigned hours are 7:00 A. M. to 3:30 P. M., Monday through Friday; 3:00 P. M. to 11:00 P. M., Monday through Friday; 7:00 A. M. to 3:30 P. M., Monday through Friday; 7:00 A. M. to 3:30 P. M., Monday through Friday; and 7:00 A. M. to 3:00 P. M., Monday through Friday, respectively. These wrecking crew members were off duty, standing by subject to call, and were available to perform wrecking service on November 19, 1949.

On November 19, 1949, cars IC 13840 and RI 25760 in train No. 72, were derailed at approximately 4:40 A. M. at Pascagoula, Mississippi, approximately 42 miles distance from Sibert shops, Mobile, Alabama.

In this derailment, IC box car 13840 became entangled in a switch point, the switch point being engaged in truck of B-end of the car to such an extent that it was necessary to dismantle the entire braking equipment including brake hangers, brake hanger pins, cotter keys, brake beams, bottom rod and safety hangers prior to the rerailing of the car.

Section foremen, Messrs. Charles Webb and Milton Parker, together with section (maintenance of way) laborers, George Webb, Andrew Goldsmith, Eddie Lee Pearman, Jesse Davis, Jesse McQuinn, J. D. Pearman, Wilbert Gibson, Lee Massey, William Bowling and Shirley Williams were dispatched to the scene of this derailment and arrived at approximately 5:00

"The work involved in the instant case is not expressly covered in the scope rule, Rule 127. The claim must rest upon the concluding phrase, i.e., practice, in respect to which carmen jurisdiction in wrecking and derailment work is recognized only in a general sense, subject, we believe, to practical exceptions such as that made here."

In further support of our position we submit statements (EXHIBITS B to T inclusive) from track supervisors and others, showing that it has been the practice for others besides carmen to rerail equipment. These statements, which are but a few of many contained in our file and available for inspection, show that the operating employes on this property have universally followed the practice of using other men besides carmen for rerailing equipment.

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.

The parties to said dispute were given due notice of hearing thereon.

On November 19, 1949, two cars were derailed at Pascagoula, Mississippi, about 42 miles distant from Sibert Shops, Mobile, Alabama, where a regular wrecking crew was maintained. In the derailment a switch point became entangled with the car trucks in such a manner that it was necessary to dismantle the entire braking equipment, including brake hangers, brake hanger pins, cotter keys, brake beams, bottom rod and safety hangers, before rerailing the car. Carrier called out a section crew which performed the work. The organization claims the work belonged to the wrecking crew (carmen) and asks that they be paid for the work lost.

It was not questioned that wrecking crews, except cooks, are composed of carmen—Rule 106 (a) current agreement. It is evident also that the carmen's classification of work rule, Rule 103, current agreement, does not include wrecking service within its scope. The claim must therefore stand or fall on Rule 107, current agreement, which provides:

"For wrecks or derailments outside of yard limits, the regular assigned crew will accompany the wrecking outfit. Within yard limits, when wrecker is used, necessary number of members of the wrecking crew will be called to perform the work."

* * The derailment in the instant case was outside of the yard limits. The wrecking outfit was not sent out. If it had been sent the regularly assigned crew would have accompanied it. The balance of the rule does not bear upon the present dispute.

It is only when a wrecker is required that all wrecking work is assigned to carmen. If the wrecker is called to wrecks or derailments outside of yard limits, the regularly assigned crew will accompany it. But if it is within yard limits, then only as many members of the wrecking crew as are necessary will be called for the work. Consequently when a derailment occurs outside of yard limits, as here, and the services of the wrecker are not required, the wrecking crew (carmen) do not have the exclusive right to perform the work. We are in accord with the carrier's position, supported by long practice as shown by the record, that the rerailing of locomotives and cars is not the exclusive work of carmen when a wrecker is not called or needed. Award 1322.

But in this case certain dismantling work, hereinbefore described, was necessary before rerailing operations could be commenced. This is work reserved to carmen under the classification of work rule of the agreement with this carrier. While others than carmen may properly reraill locomotives and cars, where a wrecker is not called or needed, by the use of jacks, frogs, rerailers, and similar expedients, there is not implied authority for such employes to invade the work of carmen specified in their classification of work rule. We have examined carefully the evidence of practice produced by the carrier and we have found nothing therein recognizing the right of a section gang to perform mechanical work reserved to carmen. In Award 1322 there is a plain inference that it is a violation of the carmen's agreement to permit section men to do carmen's mechanical work during the process of rerailing when it says: "The placing of a frog or rerailer, under the circumstances of this case, cannot reasonably be brought within the scope of mechanic's work within the intendment of Rule 33."

We are required to say that the mechanical work performed by section men in dismantling the braking equipment belonged to carmen. The claim will be sustained for this portion of the work.

AWARD

Claim sustained per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1951.