Award No. 2323
Docket No. 2043
2-B&O-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

BALTIMORE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement other than a Carman was improperly used to operate a crane in connection with loading and unloading material and matters on August 17, 18, 20, 23, 24, 25, 26, 27, 30 and 31, 1954, at Chillicothe, Ohio.

2. That accordingly the Carrier be ordered to additionally compensate Carman R. O. Justice in the amount of eight (8) hours pay for each of the aforesaid dates.

EMPLOYES' STATEMENT OF FACTS: At Chillicothe, Ohio, the Baltimore and Ohio Railroad Company, hereinafter referred to as the carrier, maintains cranes of various capacities; some of these cranes are used in the stores department to lift material and matters as the condition warrants. A crane unloading materials and matter and operated by a carman was out of service and the carrier on the above dates used a Yale-Town crane in its place to load and unload materials and matter assigning an electrician helper to operate the crane.

Carman R. O. Justice, hereinafter referred to as the claimant, was available to perform this work.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement revised September 1, 1926, reprinted May 1, 1940, reprinted November 1, 1952, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted to be, as described in the foregoing statement of facts, that this crane operator was substituted for car department employes and was assigned to perform carmen's work in violation of the agreement signed by C. W. Murphy, general chairman, Brotherhood Railway Carmen of America, Baltimore and Ohio Railroad and E. F. Blazer, Assistant to Vice President, Baltimore and Ohio Railroad, dated May 27, 1930 and made a part of the current shop crafts agreement, carmen's special rules, Rule 138, reprinted November 1, 1952.

> "Carmen's work shall consist of building, maintaining, dismantling for repairs . . . and all other work generally recognized as Carmen's work.

The attachment read as follows:

"STEAM CRANE OPERATORS—STORES DEPARTMENT

Location	Name	Seniority Under Carmen's Agreement
Mt. Clare	Piller, F. L.	2-16-20
Wincomico St.	Maus, F. J.	11- 9-28
"	Storm, R. E.	1-25-26
"	Lannon, W. J.	5-11-20
Cumberland	Diggs, C. S.	6- 1-19
Glenwood	Funnicello, Angelo	8- 1-23
Lorain	Smith, G. C.	8- 2-20
Willard	Osborn, C. E.	10- 9-24
"	Thomas, R. D.	8- 2-26
Indianapolis	Kimbrell, W. P.	7-12-20
Ivorydale	Preston, Alvin	4- 9-23
Chillicothe	Jones, E. F.	3-16-20
Washington, Ind.	Mattingly, Joseph	5-22-18

Baltimore, Md., July 3rd, 1930"

The concluding paragraph of Rule 138 of the carmen's special rules derives directly and immediately from the understanding of May 27, 1930. The question posed in this case can be satisfactorily answered in terms of existing practices and understandings at the time the memorandum of conference was executed. When the agreement of May 27, 1930 was executed, stipulating that positions of locomotive crane operators in the stores department would come under the jurisdiction of the carmen's organization, there was only one such position at Chillicothe. That position was carried as a steam crane operator. The words "locomotive crane operators" as used in the memorandum of conference and the words "steam crane operators" as defining the position were synonymous and were so intended by the parties. Actually, the position of locomotive crane operator is still in effect at Chillicothe. The memorandum of May 27, 1930, had sole application to positions of locomotive crane operators. There was certainly no intent on the part of the parties that employes coming within the scope of the carmen's special rules would be given some exclusive and sole right to perform all service connected with operating electric cranes in the stores department.

Based on the facts of record in this case, the carrier submits that the claim made here is without merit. The carrier respectfully requests that this Division so hold and deny the claim at all its parts.

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.

The carrier maintains a number of cranes at Chillicothe, Ohio, of various types and capacities. A locomotive crane used by the stores department was out of service during the period of this claim. The carrier used a Yale-Towne crane to load and unload materials and supplies in place of the disabled crane. This crane was borrowed from the locomotive department. It was operated by a helper electrician, the regular operator of the crane. The organization

contends that the operation of the crane, while being used by the stores department, was work belonging to carmen and they ask compensation for their loss of work.

The Carmens' Organization relies upon that part of Rule 138 of the carmen's Special Rules providing:

> "It is agreed that the positions of locomotive crane operators in the stores department, as well as the wrecking crane engineers, should be classified and take the rate of freight car repairmen, and all such positions would come under the jurisdiction of the Carmen's Organization."

The incapacitated crane was a steam locomotive crane operated by a carman under the cited rule. The carrier asserts that this crane was not capable of doing the work here involved as it was unsuited for reaching into box cars. The Yale-Town crane was suited for the work and it was used even after the locomotive crane became available. The latter was a gas-electric crane as distinguished from the twenty-ton, steam locomotive crane which operated only on railroad tracks. The record shows that on all previous occasions the gas-electric crane when used by the stores department was manned by an electrician's helper. When such cranes were borrowed from the car department, they were manned by carmen. Under this state of facts the carrier contends that the work of operating gas-electric cranes in the stores department has always been performed by employes in the department furnishing the crane. The carmen contend that they have always done the work of operating locomotive and gas-electric cranes.

We think it is clear that Rule 138 assigned the operation of locomotive cranes and wrecker cranes to carmen. The rule does not purport to grant the work of unloading materials and supplies for the stores department to carmen. It is the operation of the crane—a steam locomotive crane similar to a wrecker crane—that is involved in that rule, not the work of unloading such materials. The rules do not contemplate that the operation of a rubber-tired, gas-electric crane was to be operated exclusively by carmen in unloading stores materials. While the evidence of the carmen is that they operated gas-electric cranes borrowed from the car department to unload stores materials, there is no evidence that carmen operated gas-electric cranes borrowed from the locomotive department to unload stores materials. We are convinced from the evidence that carmen have not operated gas-electric cranes from the locomotive shop and that employes other than carmen have done so. Since Rule 138 does not deal with unloading stores material but deals only with the operation of locomotive cranes in the stores department, we conclude that carmen do not have the right to operate gas-electric cranes borrowed from the locomotive department for use in unloading stores department material. The evidence of the general foreman of the locomotive shop is positive that gas-electric cranes loaned to the stores department have always been operated by employes of the locomotive shop and not by carmen. We do not think the evidence shows that the work in dispute belongs to carmen.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1956.

DISSENT OF LABOR MEMBERS TO AWARD No. 2323

It is impossible to reconcile the majority's contention that Rule 138 "does not purport to grant the work of unloading materials and supplies for the

stores department to carmen," with the majority's finding that "it is clear that Rule 138 assigned the operation of locomotive . . . cranes to carmen." Inasmuch as Rule 138 of the controlling agreement assigns the operation of locomotive cranes to carmen, and the purpose for which the cranes are operated in the stores department is the loading and unloading of supplies, it seems clear that the claim should have been sustained and we are therefore constrained to dissent from the majority's findings and award.

George Wright
C. E. Goodlin
T. E. Losey
Edward W. Wiesner