

Award No. 2670
Docket No. 2515
2-CGW-FT-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

CHICAGO GREAT WESTERN RAILWAY COMPANY
SYSTEM FEDERATION NO. 73, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Federated Trades)

DISPUTE: CLAIM OF CARRIER:

Claim that the carrier has violated Rule 114 of the Shop Crafts Agreement effective February 1, 1924 (Reprinted June 1, 1954) account not assigning by bulletin the members of the various wrecking crews where derricks are maintained.

CARRIER'S STATEMENT OF FACTS: Rule 114 of agreement (hereinafter referred to as Shop Crafts' Agreement) effective February 1, 1924 (Reprinted June 1, 1954) between the Chicago Great Western Railway Company and employes represented by organizations composing System Federation No. 73, reads as follows:

"(a) Regularly assigned wrecking crews, not including engineers, will be composed of carmen, where sufficient men are available, and will be paid for such service under Rule 8. Meals and lodging will be provided by the Company while crews are on duty in wrecking service.

"(b) When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification."

On November 5, 1954, General Chairman Herman of the Brotherhood of Railway Carmen of America wrote the carrier as follows:

Claim was included in Strike Docket and Ballot dated January 30, 1956, which was actually submitted to the employes April 5, 1956. Parties were unable to compose their differences in conference during period July 9 to 12, inclusive, 1956, and carrier was notified on July 13, 1956, that the labor organizations parties to this claim had "set a strike date for seven A. M. Central Standard Time, July 18, 1956", at which time employes represented by the organizations would cease work for the carrier.

POSITION OF CARRIER: The issue in this case is whether or not the carrier is required to have regularly assigned wrecking crews at all points where derricks are maintained.

Rule 114, quoted in carrier's statement of facts, provides regularly assigned crews "will be composed of carmen and will be paid for such service under Rule 8 (Emergency Road Work Rule). Meals and lodging will be provided by the Company while crews are on duty in wrecking service."

In other words, the rule simply sets forth the conditions which apply when carmen are regularly assigned to wrecking service; however, the rule does not require the carrier to have or maintain regularly assigned wrecking crews at any point. Clearly, Rule 114 does not make it mandatory for the carrier to provide regularly assigned wrecking crews and under the circumstance, we respectfully request the Board to sustain the carrier's position in this dispute and deny claim.

EMPLOYEES' STATEMENT OF FACTS: The carrier described cases are not ready for consideration and action by your Board. They are a group of unsettled disputes involving this carrier and System Federation No. 73, Railway Employes' Department, AFL-CIO, which have not been handled to conclusion on the property and the right of System Federation No. 73, Railway Employes' Department, AFL-CIO to endeavor to settle them by further negotiations or by means other than National Railroad Adjustment Board pursuant to Article V, Section 5, of the agreement of August 21, 1954, has been challenged by the carrier in the courts.

It is, therefore, our position that until the courts have determined this matter and until these disputes have been handled as provided in Section 3, First (i) of the Railway Labor Act, as Amended, they are not properly referable to your Board.

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.

Rule 114 provides in part that "regularly assigned wrecking crews, not including engineers, will be composed of carmen, where sufficient men are available." It is obvious that such rule does not require regularly assigned wrecking crews at each point where a derrick is maintained. To establish a violation would require evidence of the situation at each particular point, particularly as to the availability of sufficient men. No such showing has been made.

Claim of violation of Rule 114 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, 1957.