Award No. 3651
Docket No. 3154
2-SOU-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, A.F. of L.—C.I.O. (Carmen)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under a practice of many years and under the current Agreement the Carrier improperly discontinued the use of dining and bunk cars as a part of derrick outfits at Knoxville, Tennessee, and elsewhere over the System, transporting a part of the derrick crews to and from scene of derailments by motor vehicles over the highways.

2. That accordingly the Carrier be ordered to restore dining and bunk cars as a part of derrick outfit at Knoxville, Tennessee, and elsewhere over the System.

EMPLOYES' STATEMENT OF FACTS: The Southern Railway System, hereinafter referred to as the carrier, maintains a derrick outfit at Knoxville, Tennessee, and at many other points over the system.

January 1, 1958, or shortly thereafter, the carrier discontinued using dining and bunk cars as a part of derrick outfits at Knoxville, Tennessee, and elsewhere over the system, and began transporting all or a part of the derrick crews to and from derailments by motor vehicles over the highways, sleeping the crews in motels or hotels and feeding them in restaurants or from containers of food brought to scene of derailments.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement effective March 1, 1926 as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted, based upon the foregoing facts the carrier on or about January 1, 1958 violated the clear unambiguous

3 First (i) of the Railway Labor Act.) Thus the Board cannot make an award ordering what is here demanded without disregarding the law, the evidence and the agreement between the parties and attempting to impose upon the Carrier conditions of employment and obligations with respect thereto not agreed upon between the parties by following the process of collective bargaining as outlined in the Railway Labor Act. The Board has heretofore held that it would not take such action. For example, in Third Division Award 6007, Referee Messmore, it was held:

> "In determining the rights of the parties it is our duty to interpret the applicable rules of the parties' agreement as they are written. It is not our function or right to add thereto. See Award 4435."

In Third Division Award 6828, Referee Messmore, it was held:

> "The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties. If inequities among employes arise by reason thereof, this Division is without authority to correct them as it has not been given equity powers. In other words, we cannot make a rule or modify existing rules to prevent inequities thus created. Renegotiation thereof is the manner provided by the Railway Labor Act, which is the proper source of authority for that purpose. See Award 5703. See, also, Awards 4439, 5864, 2491.
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> 'The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance.' See Awards 3523, 6018, 5040, 5976."

The Board having heretofore recognized the limitations placed upon it by law and that it does not have authority to grant new rules or working conditions such as here demanded by the Brotherhood must for this reason, if for no other (and there are others), make a denial award.

CONCLUSION

Carrier has proven that:

(a) Under the terms of the effective agreement, Carrier has not contracted to furnish dining or sleeping cars to wrecking crews.

(b) Submission of the dispute to the Board in an effort by the Brotherhood to establish a new rule or working condition by a Board award.

(c) The Board is without authority, under the law by virtue of which it functions, to do what is here demanded, i.e., order Carrier "to restore dining and bunk cars as a part of derrick outfit at Knoxville, Tennessee and elsewhere over the System."

Claim being without any basis and unsupported by the agreement in evidence, the Board is left with no alternative but to make a denial award.

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.

Parties to said dispute were given due notice of hearing thereon.

This claim protests the Carrier's action in discontinuing the use of dining and bunk cars as part of wrecking outfits at Knoxville and other points. It is requested that the Carrier be directed to restore these cars to the outfits.

Effective January 1, 1958 the Carrier began transporting regularly assigned wrecking crews via highway vehicles from their home station to the point where wrecking service is needed, except that derrick engineers and firemen have generally continued to travel on the trains moving the derricks in order to have the derrick in working order upon arrival at the wrecking scene. Meals and lodging are provided for the wrecking crews at hotels, motels or other lodging places. When it is necessary for the crews to be fed on the job, food is taken to them in containers designed for such purpose. The Carrier states that all wrecking outfits have been, or are being, equipped with portable houses containing lavatories and toilets for use by the men while on the job engaged in wrecking service. Carrier asserts the new procedure was introduced because "the maintenance of dining and sleeping cars in wrecking service on a standby basis for occasional use is an unjustified expense and their use outmoded."

Rule 152 provides in pertinent part that "meals and lodging will be provided by the Company while crews are on duty in wrecking service." The Carrier has continued to provide meals and lodging under the circumstances specified in the rule. Since Rule 152 does not prescribe the particular method to be followed in providing meals and lodging, we cannot say the rule has been violated solely because the Carrier has substituted one method for another. There is no showing in the record that the present procedure ignores the health and convenience of the crews.

Rule 153 provides: "When wrecking crews are called for wrecks or derailments outside yard limits the regularly assigned crew will accompany the outfit." The Organization contends this rule is violated because the crews no longer are permitted to accompany the outfit.

Traditionally, wrecking crews have accompanied the outfit by riding to the scene of accident in bunk cars attached to the derrick trains. Rule 153 does not specify bunk cars as the means of transport to the accident, however, nor does it prescribe any other means of conveyance. We have previously interpreted the language "will accompany the outfit" as it appears in rules of this nature to mean that the regularly assigned wrecking crew is entitled to perform the work for which the outfit is intended to be used. The cited language also means that the crew must be called to depart at the same time as the outfit.

It is clear from what has been said above that the purpose of the cited provision is to assure to the regularly assigned wrecking crew the duty time arising from dispatch and use of the outfit to perform wrecking work. We do not construe Rule 153 to require that the crews travel to the scene of accident in bunk cars attached to the derrick train, however, nor do we interpret the subject rule to mean that the crews may be transported in no other fashion except on the derrick train itself. So long as the regularly assigned crew is used to perform the work handled by the outfit, and so long as they are called for this work in time for the departure of the outfit from

the home station, the use of highway vehicles for transporting the crew to the scene of accident or derailment is not a violation of the rule. The question of safety raised by the organization is found to be without merit. Since neither the right to perform wrecking service nor the amount of time on duty is here in dispute, the contention of Rule 153 having been violated must be rejected.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1961.

DISSENT OF LABOR MEMBERS TO AWARD No. 3651

The patent erroneousness of the present findings is immediately disclosed by referral to the governing agreement. Rule 153 of the agreement negotiated pursuant to the Transportation Act of 1920, and still in full force and effect, specifically states that "When wrecking crews are called for wrecks or derailments outside yard limits the regularly assigned crew will accompany the outfit." (emphasis ours) There are no exceptions in the rule. So long as the agreement is in effect working conditions may not be arbitrarily changed as under Rule 175 thereof "This agreement constitutes the sole agreement between the Company and employes affected and shall remain in effect until thirty (30) days' written notice shall be given by either party to the other of a desire to change."

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink