Award No. 3859

Docket No. 3757

2-B&O-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the award was rendered.

PARTIES TO DISPUTE:

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

THE BALTIMORE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated when the Carrier used other than Carmen to rerail Diesel Locomotive 4030 within yard limits of Keyser, W. Va. on March 30, 1959.

2. That accordingly the Carrier be ordered to additionally compensate Carmen J. M. Haynes, D. E. Snyder, L. L. Nutter, E. C. Kitzmiller, J. D. White and J. A. Boyce four (4) hours each at the prevailing Carman's rate of pay.

EMPLOYES' STATEMENT OF FACTS: On March 30, 1959, at the Keyser, W. Va. roundhouse of the Baltimore and Ohio Railroad Co., hereinafter referred to as the carrier, Diesel Units 4030, 5010 and 4019, which were called for 12:20 P. M. were being moved from the inspection pit to the ready track. In making this movement, the front wheels of the front truck of Unit 4030 picked the partially open switch and derailed.

Diesel Unit 4030 was rerailed by four roundhouse employes and one Maintenance of Way trackman under the supervision and with the assistance of General Foreman W. S. Watson.

The carrier had employed and on duty 84 carmen in its Keyser Car Shop which is within the same seniority district and located adjacent to the roundhouse.

The following named carmen are regularly employed and assigned by the carrier in its Keyser Car Shop with hours 7:00 A. M. to 3:30 P. M. work weeks as indicated, and are hereinafter referred to as the claimants:

"J. M. Haynes—Sat. through Wed.—Rest days Thur. and Fri.
D. E. Snyder—Mon. through Fri.—Rest days Sat. and Sun.
L. L. Nutter—Wed. through Sun.—Rest days Mon. and Tue.
E. C. Kitzmiller—Sun. through Thur.—Rest days Fri. and Sat.
J. D. White—Wed. through Sun.—Rest days Mon. and Tue.
J. A. Boyce—Wed. through Sun.—Rest days Mon. and Tue."

agement agreed to comply with the provisions of this jurisdictional dispute agreement by not taking work away from one craft and assigning it to another.

Would appreciate it if you would issue instructions to all concerned that it is the request of System Federation No. 30 that the provisions contained in the jurisdictional dispute agreement be complied with in its entirety.

Very truly yours,

(s) A. H. Stearns
(t) A. H. Stearns
President."

AHS/B

This Division has ruled in cases of this kind that an appeal to this Board is premature:

In Award 2322 of this Division (System Federation No. 121 v. T. & P.) (Referee Carter) the same kind of "jurisdictional dispute agreement" was at issue.

In that award it was held in part as follows: " * * * the appeal to this Board is premature. The appeal must be dismissed for that reason."

CARRIER'S SUMMARY

The carrier submits that employes of the car department claiming here, all carmen, have no special, sole or exclusive rights to this work. On the basis of the rules agreement and established past practices, this work does now, and has always, belonged to employes coming under the scope of the operating, as well as the non-operating, agreements, there being no exclusive reservation of this work to employes coming under the carmen's agreement. The carrier has cited numerous awards of this Division confirming this general proposition. On this basis, therefore, the claims found here should and ought to be denied.

On the other hand, the effect of the claim made here by the carmen's committee is to take away work performed by employes coming under the shop crafts' agreement, covered by other than the carmen's special rules, and to capture to the carmen's agreement (Special Rules) work that has never before been its exclusive reservation. This being the case, in the alternative, the carrier submits this claim should properly be dismissed before this Board.

The carrier respectfully requests, therefore, that this claim be denied in its entirety or, in the alternative, as stated hereinabove, be dismissed.

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.

While a hostler was taking three diesel units to a roundhouse track where a road crew awaited them, the front wheels of the first truck were derailed. Four roundhouse employes under the general locomotive foreman's direction placed some blocks, the hostler backed the units, and the wheels were rerailed, all in about twenty minutes.

The claim is that "under the clear and unequivocal language" of Rule 142 "the Carrier was not authorized to use other than carmen to perform the work involved in rerailing" the diesel unit. The portion of the rule relied upon is the final sentence providing:

> "For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

Rule 138, the carmen's scope or classification of work rule, makes no reference to wrecking service or the rerailing of engines or rolling stock, or to personnel engaged in such work, except for the provision that wrecking crew engineers shall be classified and paid as freight car repairmen and shall come under the jurisdiction of the Carmen's Organization.

The question presented here is whether the provision of Rule 142 quoted above made the rerailing of the engine wheels the exclusive work of carmen, so that the use of the hostler, the four roundhouse men and foreman violated the agreement.

This rule is one of two associated rules adopted by the Labor Board in 1921, namely Rules 141 and 142, and brought down through various agreements, with their titles and context unchanged. It seems clear that they constitute wrecking crew consist rules rather than work classification or scope rules.

Rule 141 is entitled "Wrecking Crews," and provides in part:

> "Regular assigned wrecking crews will be composed of carmen, where sufficient men are available, * * *
>
> "When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification."

Thus not even service on wrecking crews is entirely limited to carmen.

Rule 142 is entitled "Make-up Wrecking Crews" and contains two separate provisions, the first relating to "wrecks or derailments outside of yard limits," and the second to "wrecks or derailments within yard limits." Under these circumstances we would not seem justified in taking the final provision out of context and converting it from half of a wrecking crew consist rule to a scope rule or an exclusive jurisdiction rule.

The awards cited by the parties seem contradictory and inconsistent, partly because of differences in form, title and context of rules, and partly because of past practices shown in the records of some cases, and other differences in claim records. But it seems generally agreed that train and engine crews can participate in the rerailing of cars and engines under their charge, where regular wrecking crews or outfits are not needed. This certainly constitutes an exception to the exclusive rights claimed by carmen

under Rule 142, and justifies at least the use of the hostler, which eliminates the claim of one of the six claimants here.

In view of the record in this case, the titles, form, context and history of Rules 141 and 142, and the precedents of Awards 2343, 3257 and 3265 relating to this property, the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1961.

DISSENT OF LABOR MEMBERS TO AWARD No. 3859

Rule 138 "makes no reference to wrecking service or rerailing" for the reason that this work is covered in that portion of the rule reading ". . . all other work generally recognized as carmen's work . . ."

It would appear that the majority has in part based its denial of the present claim on the title of Rule 142 rather than the contents of the rule even though it is a well known point of law that inferences drawn from headings are entitled to very little weight but may be considered in aid of an interpretation only in case of doubt or ambiguity. Rule 142 leaves no doubt as to its unambiguous meaning. The majority implies concern that a part of a rule will be taken out of context but uses Rule 141, a rule not involved, in an attempt to show an exception to Rule 142. Since the present dispute involves a derailment within yard limits it can hardly be considered as taking the final requirement of Rule 142 out of context when it is that part of the rule which prescribes that "For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work." The rule contains no exception and should be applied as written. This Board is not authorized or permitted to revise or amend the governing rules of any agreement.

T. E. Losey
E. J. McDermott
James B. Zink
Edward W. Wiesner
C. E. Bagwell