Award No. 4129
Docket No. 3820
2-KCT-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 38, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

KANSAS CITY TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement car repair work at Kansas City, Missouri Car Department performed by carmen in connection with maintenance of equipment was improperly transferred from the Kansas City Terminal Railway Carmen to three (3) Atchison, Topeka and Santa Fe Railway Company employes in the Kansas City Terminal train yards September 13, 1959.

2. That accordingly the Carrier be ordered to compensate Carmen J. S. Wolverton, J. H. Klempnaur, and F. J. McLaren for eight (8) hours each at the applicable overtime rate of pay for September 13, 1959.

EMPLOYES' STATEMENT OF FACTS: The Atchison, Topeka and Santa Fe Railway Company uses the Kansas City Terminal Railway Company passenger station for their passenger service and the Kansas City Terminal Railway Company train yards for their freight service. The Kansas City Terminal Railway Company yard switch crew perform the switching and the carmen perform the inspection of the trains and perform repair work on cars that need repairs which arrive and depart in the Atchison, Topeka and Santa Fe Railway Company trains at Kansas City, Missouri. On September 13, 1959, Atchison, Topeka and Santa Fe Railway freight trains 2ND, No. 39, while moving through Kansas City Terminal Railway Company train yard pulled a drawbar from the "B" end of freight car Central of Georgia No. 5008 which was sixty-five (65) cars from the rear of the train, causing the train to pull apart. Three (3) Atchison, Topeka and Santa Fe Railway Company carmen were brought from Argentine, Kansas, and they performed the work of chaining the Centrol of Georgia freight car No. 5008 to the next car in order to pull it out of the train.

This work was performed by the Atchison, Topeka and Santa Fe Railroad car force on this train in the Kansas City Terminal Railroad yard where there

tracks, no work is performed by Terminal employes in connection with the movements. The moves originate and terminate outside the Terminal; they employ Terminal tracks for transit only, performing no switching or other work and the movements relate solely to the business of the owner-tenants. Such movements were specifically provided for in the original operating agreement of 1909. The Terminal, therein, agreed to grant to each of the owner-tenants:

> ". . . the right and privilege . . . of running its freight trains drawn by its own motive power and manned by its own crews upon and over said Terminal facilities or any part hereof."

Such a movement was involved in the instant case. Santa Fe 2/39 was a through freight originating outside the Terminal; it merely used Terminal tracks to reach Argentine Yard located on the Santa Fe. It performed no work on Terminal property; it was not delivered or yarded at the Terminal. The Terminal had no connection with it.

When the draw bar broke on a car in this train, Santa Fe officials properly sent Santa Fe carmen to the point of the break-in-two. The car was chained up and moved by the Santa Fe crew to Argentine Yard. This was the extent of the work done and it was done on a Santa Fe train moving towards a Santa Fe destination. It was not done on equipment delivered to or turned over to the Terminal for repairs or servicing.

In circumstances such as this, responsibility for the train would lie with the Santa Fe. It might, of course, request Terminal to send forces to repair the car and get the train moving. Likewise, if the situation had created an emergency, blocking the passage of Terminal traffic, Terminal might intervene to clear up the emergency. It did not, however; the car was chained up and delivered by the Santa Fe train. Terminal was not requested to furnish carmen for the operation and did not do so.

II.

The position of the employes, their claims to the work, rests upon only the fact that the incident occurred on Terminal property. They do not claim any other connection with the work; they do not deny that this was a Santa Fe train, originating and terminating outside the Terminal; they do not deny that the train was merely using Terminal tracks to reach its destination, and they do not deny that it performed no work on the Terminal.

The Santa Fe, in using the Terminal tracks for this movement, was acting under long established rights. The chaining up of the car to permit the continuation of the move was no infringement upon the rights of Terminal carmen. The work that they perform flows, chiefly, from the outside owner-tenants: The servicing of passenger equipment that originates, terminates or stops over at the Union Station; the freight equipment delivered to the Terminal; or the freight business handled and switched from industries served by Terminal. In this case, however, the work claimed fits none of the categories we have listed. It was not work that the owner-tenant had requested the Terminal to perform. The Santa Fe train was merely handling its own business over Terminal tracks as it had the right to do and the work performed could not be said to be the exclusive work of the Terminal carmen.

The claim should be denied.

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 waived right of appearance at hearing thereon.

The Carrier operates the Union Station at Kansas City, Missouri. It maintains facilities for servicing and switching passenger trains and conducts freight operations of its own. It employs a working force necessary to perform such work. It is owned by twelve other carriers which lease its facilities.

The Carrier is also a "bridge" line. Its tracks are used by the owner-tenants for freight train movements through Kansas City and for transfers between carriers. In such instances, the trains originate and terminate outside the Carrier's facilities, using its tracks for transit movements only. The instant grievance arose out of such a transit movement.

On September 13, 1959, a freight train of the Atchison, Topeka & Santa Fe Railway System (hereinafter referred to as the "Santa Fe") which had originated outside the Carrier's facilities proceeded on the Carrier's tracks to the Santa Fe's Yard at Argentine, Kansas, which is also outside the Carrier's territory. While moving on the Carrier's tracks, the train pulled a draw bar from a freight car. The Santa Fe sent three of its own carmen from Argentine who chained up the car which was then moved by a Santa Fe crew to Argentine.

The three Claimants, J. S. Wolverton, J. H. Klempnaur, and F. J. McLaren, who are carmen in the Carrier's employ, filed a grievance in which they contended that the above described repair work should have been performed by them instead of by the Santa Fe carmen. The Claimants requested compensation in the amount of eight hours each at the applicable overtime rate. The Carrier denied the grievance.

1. The Claimants primarily rely on Rule 71 of the applicable labor agreement which contains a detailed job description of the position of carmen. In order to properly evaluate Rule 71, it must be read together with the Preamble to the agreement which defines the scope thereof and thus qualifies the Rule. See: Awards 1556 and 2198 of the Second Division. For Rule 71 is only applicable here if the work described therein comes under the scope of the agreement. The Preamble reads, as far as pertinent, as follows: "These rules shall govern the hours of service and working conditions of employes in the following departments, crafts and classes:

. . . . CAR DEPARTMENT
Carmen
Carmen, Second Class
Carman Helpers . . . ."

The wording of the Preamble is neither clear nor unambiguous. Plausible contentions can be made for conflicting interpretations. Specifically, the language used therein may raise a doubt as to whether the scope of the agreement covers all carmen's work performed within the geographical territory of the Carrier as asserted by the Claimants or whether the agreement only covers

work which the Carrier has the power to assign as claimed by it. The Preamble is, therefore, subject to a reasonable construction. A basic principle commonly observed in the interpretation of a written agreement, the meaning of which is doubtful, is to ascertain, as far as possible, the apparent intent of the parties thereto and to give reasonable effect to such intent. See: Frank Elkouri and Edna A. Elkouri, **How Arbitration Works,** Revised Ed., Washington, D. C., BNA Incorporated, 1960, pp. 203-204 and references cited therein.

In applying that principle to the facts of this case, we have reached the following conclusions:

The parties are in substantial agreement that the Preamble generally covers carmen's work performed on trains which arrive at and depart from the Kansas City Union Station. However, the train in question did neither originate nor terminate at said Station. It was a freight train in transit from a point outside the Carrier's territory to another point also outside thereof. It was not delivered to the Carrier's freight yard nor to any other point where freight cars or trains are normally delivered to the Carrier. No equipment of the Carrier was used in chaining up the car in question or in moving it to Argentine. The only connection between the freight train under consideration and the Carrier's facilities was that the train was proceeding on the Carrier's tracks when the accident occurred. The work in dispute was assigned by the Santa Fe and not by the Carrier. The latter had no voice in or control over the assignment and performance of the work. What actually occurred here was that work fundamentally the responsibility of the Santa Fe was assigned by it to its own carmen who are covered by a different labor agreement. In other words, the repair work in question was merely performed within the geographical territory of the carrier without any action, authority or control on the part of the Carrier. In the absence of any indication to the contrary in the Preamble, we do not think it was the intent of the parties to the labor agreement to extend the scope thereof to such work. Any other construction would widen the scope of the agreement far beyond any reasonable application. See: Award 2998 of the Second Division.

Since we are of the opinion that the work in question was not covered by the scope of the labor agreement, Rule 71 is inapposite to the decision of the instant case.

2. The Claimants also rely on Rule 43 of the labor agreement which provides, as far as pertinent, that "where employes are sent out on the road at the request of the carriers who use the facilities of the Kansas City Terminal Company, the employes will be compensated at the same rate as at home station and will receive expenses . . ." A careful examination of said Rules has satisfied us that it only prescribes the method of compensation **if and when** another carrier requests the services of the Carrier's employes on the road. No such request was made by the Santa Fe. Accordingly, Rule 43 does not sustain the Claimants' argument.

3. The Claimants assert, further, that there have been numerous occasions when freight trains of the owner-tenants needed repairs similar to those here performed by the Santa Fe carmen and that carmen of the Carrier have always been called to perform such work. However, the Claimants have not offered evidence of a representative number of specific instances from which we could reasonably conclude the existence of a long-continued, consistent, and mutually

accepted practice. Hence, the Claimants assertion is without merit. See: Awards 4097 and 4100 of the Second Division.

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 February, 1963.