

Award No. 4186
Docket No. 4129
2-MKT-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the controlling agreement, the Carrier on January 25, 1961, violated said agreement by hiring from a private concern at Hartsburg, Missouri, a crane and bulldozer and their operators, for the purpose of rerailing a car at Hartsburg, Missouri.

2. That the Carrier be ordered to compensate Derrick Engineer O. J. Verheaghe at the time and one-half rate for six (6) hours, beginning at 5:00 A.M. to 8:00 A.M., and from 4:30 P.M. to 7:30 P.M. on January 25, 1961.

EMPLOYEES' STATEMENT OF FACTS: At St. Louis (Baden), Missouri, the M-K-T Railroad Company, hereinafter referred to as the carrier, maintains a regularly assigned wrecking crew, including Carman O. J. Verheaghe, hereinafter referred to as the claimant, who is the regularly assigned engineer of the crew.

On January 25, 1961, at 5 A.M., carrier sent Carmen B. Stone and W. E. Lloyd, two members of the regularly assigned wrecking crew at Baden, by company owned highway truck to Hartsburg, Missouri for the purpose of retruck a car which had been tipped over in a derailment at Hartsburg.

Upon arrival at the scene of the accident, Carmen Stone and Lloyd proceeded in the operation of righting the car and placing it upon the trucks, being assisted in such work by the operators of a bulldozer and a derrick which operators and machines had been engaged by the carrier from a private concern. Upon completion of the task assigned them, Carmen Stone and Lloyd returned, by company truck, to Baden, arriving at 7:30 P. M.

This dispute has been handled with all officers of the carrier designated to handle such affairs and all of them have declined to adjust it.

during the handling of this matter on the property. In Award 3630, the Division held:

"It is a fundamental principle of the employer-employee relation that the determination of the manner of conducting the business is vested in the employer except as its power of decision has been surrendered by agreement or is limited by law. Contractual surrender in whole or in part of such basic attribute of the managerial function should appear in clear and unmistakable language." (Emphasis ours.)

Carrier respectfully submits that nowhere in the language of Rule 73 (c) can be found any surrender in whole or in part of carrier's basic attribute of the managerial function i.e., carrier's managerial right and prerogative to determine whether its wrecking outfit will or will not be sent out, and whether it will or will not use equipment not owned by it in connection with rerailling cars. Award 3630 held that such a surrender must appear in clear and unmistakable language; in the instant case we respectfully submit that not even by implication has this carrier surrendered in whole or in part its basic right to perform the functions of management, and that this alleged claim is nothing more than an attempt by the employees and organization to usurp and invade that basic right of the carrier.

This alleged claim is wholly without merit and agreement support, and it should be denied in its entirety.

Except as expressly admitted herein, the Missouri-Kansas-Texas Railroad Company denies each and every, all and singular, the allegations of the organization and employees in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons the Missouri-Kansas-Texas Railroad Company respectfully requests the Second Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Company such other relief to which it may be entitled.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On January 25, 1961 at 5 A. M., the carrier sent two members of the regularly assigned wrecking crew at Baden Mo. to Hartsburg Mo. to handle a derailment.

With the assistance of a bulldozer, derrick and operators hired by the carrier from a private concern, the work was accomplished and the two carmen returned to Baden at 7:30 P. M.

Claimant was the regularly assigned derrick engineer of the wrecking crew at Baden and seeks compensation for six hours at the time and one-half rate from 5:00 to 8:00 A. M. and from 4:30 to 7:30 P. M. on January 25, 1961.

Carrier's position is that the Organization is here seeking a change in Rule 73(c) to give it a right to determine when the wrecking outfit will or will not be sent out, and further to restrict the Carrier's asserted right to utilize equipment not owned by it, at wrecks or derailments.

Carrier further asserts that this claim was not timely appealed under the 9 months requirement of Rule 27(d) of the controlling agreement.

The Carrier's objection on timeliness under Rule 27(d) is overruled on the basis of our award No. 4040. The letter of intent to appeal in the instant case was filed with this Division within the 9 months period.

Rule 73(c) reads as follows:

"(c) When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, carmen will be called to perform the work."

Carrier repeatedly cites our Award No. 2208 in its submission and rebuttal as supporting its position herein. But in Award No. 2208 a wrecking crew was never called. In the instant case, two regularly assigned members of the wrecking crew were called, and it then became the carrier's obligation to see that "a sufficient number" were called. Obviously this obligation to the crew involved was not met since an outside force and equipment was recruited at Hartsburg.

It does not seem to this Division that the Organization is seeking to substitute its judgment for that of management, but rather it is seeking its rights under the controlling agreement. That determination was made here by the carrier, and it then was obligated to call out a sufficient number of the regularly assigned crew which would obviously have to include this claimant.

AWARD

Claim sustained. Claimant to be compensated for six hours at the time and one-half rate for 5 A. M. to 8:00 A. M. and for 4:30 P. M. to 7:30 P. M. January 25, 1961.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April, 1963.