

Award No. 4304

Docket No. 3973

2-L&N-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1 — That the Carrier improperly abolished all wrecking crew assignments at Birmingham (Boyles) Alabama, effective February 22, (4 jobs) and April 4, 1960 (1 job) which had been previously advertised separate from other carmen's positions and re-advertised them attached to specific carmen's jobs, and

2 — That accordingly, the Carrier be ordered to re-establish all wrecking crew assignments separate from specific carmen's positions, as they were prior to February 22, and re-assign the former occupants of the positions affected by bulletins Nos. 53, 54, and 78 to same.

EMPLOYEES' STATEMENT OF FACTS: On February 10, 1960, Bulletin No. 53 was posted at Birmingham (Boyles) Alabama abolishing wrecking crew assignments held by 4 members of the wrecking crew and at the same time Bulletin No. 54 was posted abolishing a like number of regular jobs held by carmen assigned to light-heavy repair work. Bulletins Nos. 55 and 56 were also posted on February 10, 1960 advertising 4 new jobs classified as "Wrecking Crew, Ground Man and Carman" and 1 new job classified as "Assistant Wrecker Engineer & Carman." The duties of these jobs were listed as "repairing freight cars, wrecking service when needed (1 job operating wrecker crane) and other assigned duties."

Under date of March 23, 1960 Bulletin No. 77 was posted advertising a new assignment as "Wrecker Engineer & Carman Carpenter" with duties of "operating wrecker and locomotive crane, when needed, carpenter work and other assigned duties." On March 31st, Bulletin No. 78 was placed on bulletin boards abolishing a job in the carpenter shop, effective April 4, 1960, occupied by Carman L. E. Dean, who at the time, was also assigned to a separate position as wrecking engineer. Obviously, since the carrier had arbitrarily

POSITION OF CARRIER: Rule 107(a) of the current agreement with the shop crafts provides:

"Regularly assigned wrecking crews, except cook, including engineers and firemen will be composed of carmen and will be paid for such service under Rule 11."

From the foregoing it is evident that regular assignment to the wrecking crew necessitated that the employee be a carman. It follows, therefore, that the rules of the general agreement, applicable to carmen as a group, would likewise be applicable in the assignment of a carman to the wrecker. Further, since wrecker service is not a full time assignment, it is necessary that the carman be given a "home base" on which he might go on and off duty. In this instance the "home base" was designated as the repair track.

Carrier asserts that the handling as given constituted no violation of the agreement. There was no restriction—other than that on any specific assignment in any group—placed on any carman so far as his bidding rights were concerned. All carmen on the Boyles roster were privileged to bid on the new assignments. It was a case of the individual carman determining whether he desired to work on the medium-heavy repair track as well as protecting wrecking service as and when needed. There is no rule in the current agreement with the carmen which restricts carrier's right to set up positions in the manner as was done in this case. Apparently what is being done here is that the employees are endeavoring to now have this Board place an interpretation on the agreement which would, in effect, restrict its operation.

There is no merit to the claim of the employees and it 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 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 were given due notice of hearing thereon.

At Birmingham (Boyles), Alabama, on February 22, 1960, carrier abolished wrecking crew assignments (4 jobs) and on April 4, 1960 (1 job) which previously had been advertised and assigned with no prescribed requirement that applicant should also hold any particular full-time carman's position. Afterward, carrier re-advertised the same number of wrecking crew jobs attached to specific carmen's positions. As a result, four new jobs were established, classified as "Wrecking Crew, Ground Man and Carman", which new positions called for "Repairing Freight Cars, Wrecker service when needed and other assigned duties", also a fifth new position, which was classified as "Ass't. Wrecker Engineer & Carman", with duties specified as "Operating Wrecker Crane, Repairing Freight Cars, and other assigned duties". The bulletins covering the above 5 jobs also stated: "APPLICANTS FOR ABOVE POSITION MUST LIVE WITHIN CALLING DISTANCE AND BE AVAILABLE FOR CALL FOR WRECKER DUTY AT ANY TIME."

In addition, another bulletin was posted advertising a new assignment

designated "Wrecker Engineer & Carman Carpenter" with duties described as "Operating Wrecker and Locomotive Crane, when needed, Carpenter work and other assigned duties." For this assignment, it was prescribed: "APPLICANTS FOR THE ABOVE POSITION MUST BE QUALIFIED WRECKER AND LOCOMOTIVE CRANE ENGINEER—MUST BE QUALIFIED CARPENTER, AND HAVE NECESSARY TOOL (sic) TO PERFORM WORK IN CARPENTER SHOP, MUST LIVE WITHIN CALLING DISTANCE, AND BE AVAILABLE FOR CALL FOR WRECKER DUTY AT ANY TIME." This position was advertised for March 30, 1960, and, as of April 4, 1960, a position called "Carman-Carpenter-Formerly held by L. E. Dean—in Carpenter Shop" was abolished.

The employees assert the above steps taken by carrier violate Rule 107(a) of the agreement between the parties, which reads as follows:

"107(a) Regularly assigned wrecking crews, except cook, including engineers and firemen will be composed of carmen and will be paid for such service under Rule 11."

Employees contend that, despite the fact that the rule merely provides that regularly assigned wrecking crews will be composed of carmen, the carrier has restricted such assignments to two particular classes of carmen, to wit, Car Repairers and a Carman Carpenter, excluding several other classes of carmen carried on the same seniority roster. In other words, employees insist that the rule does not require an employee to be a light-heavy car repairer or a carpenter to be eligible for assignment to the wrecking crew, merely that he be a carman. Also they say the rule does not require that an employee have necessary tools to perform carpenter work in order to be eligible for a job as wrecker engineer. Again they emphasize, the rule merely requires that to be a member of the regularly assigned wrecking crew an employee must be a carman; therefore, that if he be carried on the seniority roster common to carmen, he would be eligible for a wrecking crew assignment, no matter what his other carman duties might be.

And employees further say that not only is their position clear under rule 107(a), but it is supported by the practice followed at Birmingham (Boyles) for over thirty years in awarding wrecker crew jobs following written application in accordance with seniority and regardless of what applicant's regular carman assignment might be. In restricting wrecking service to certain jobs, employees maintain that carrier has changed the past uniform interpretation of rule 107(a) and has done so without regard to rule 145(b) and (c) which provides for mutual agreement by the parties should they desire proposed changes of such a nature.

In opposition to employees' claim, carrier argues there was no restriction placed on any carman so far as his bidding rights were concerned; that all carmen on the roster here involved were privileged to bid on the new assignments; and that no rule in the current agreement restricts carrier's right to set up positions in the manner hereinabove set forth.

To the contrary, the employees point out that all carmen at Birmingham (Boyles Shops) are carried on a single seniority roster from which such full-time positions as Car Inspectors, Car Repairers, Engine Carpenters, Welders, Locomotive Crane Engineers, Write-up Men, Carmen Carpenters, Etc., are filled and, furthermore, that it has heretofore always been the practice to allow all employees carried on the Carmen's Seniority Roster at Birmingham to bid in positions in the wrecking crew unattached to other positions, regardless of their regular carman assignments. However, now, under the change

here considered, if a carman wishes a wrecking crew assignment, he must also accept a car repairer's (light-heavy repairs) or a carman carpenter's job and give up any regular assignment he may have and which he may much prefer.

Examination of the record and thorough consideration of the conflicting positions of the parties as developed and submitted in argument, together with authorities cited—Awards 490, 1440, 2039 and 2603—lead to the conclusion that the carrier has restricted the seniority rights of its carmen to two particular classes (Car Repairers and Carman Carpenters) and has thereby violated the agreement of the parties. Therefore, it is ordered that employees' claim be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1963.