Award No. 4317
Docket No. 3943
2-P&LE-TWUOA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

RAILROAD DIVISION, TRANSPORT WORKERS UNION OF AMERICA, A. F. of L. - C. I. O.

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

On March 15, 1960 the storehouse crane and employes were used to rerail a gondola on #6 track near the McKees Rocks bridge between the "Y" Shop and "KS" Shop. At McKees Rocks, Pa. we do have a wreck crew and the organization feels that Rule 27 of the present agreement was violated when storehouse employes were used to rerail the gondola car. For this reason the organization requests that the wreck crew members S. Filipovitz and R. Shutz be compensated eight (8) hours for work performed by the storehouse employes.

EMPLOYES' STATEMENT OF FACTS: This case arose at McKees Rocks, Pa. and is known as Case M-288.

At McKees Rocks, Pa. the carrier does have a wreck crew and this crew is composed of carmen including the fireman and engineer.

On the day in question the carrier did use the ground crew (carmen) from the wreck crew, but did not use the fireman and engineer.

The derrick that was used belongs to the storehouse department, but it is a piece of machinery owned by the carrier and when used to perform work that belongs to another department (car) should be manned by the car department employes.

The fireman and engineer from the storehouse department were used to operate the crane which is a violation of the agreement Rule 27 as it should have been operated by the fireman and engineer of the car department.

Schutz was used to perform the service here in dispute.

Numerous awards of the National Railroad Adjustment Board have been cited in support of carrier's position in this case.

Carrier respectfully submits that the claim is absolutely devoid of merit and requests that same 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 were given due notice of hearing thereon.

On March 16, 1960, a car was derailed near the McKees Rocks (Pennsylvania) bridge, a point within the Carrier's shop limits. The car was rerailed by three carmen with the assistance of the storehouse department crane which was operated by a storehouse employe.

The Claimant S. Filipovitz has been employed by the Carrier as a carman. He has also been a member (wreck derrick engineer) of the regular wrecking crew at McKees Rocks. He filed the instant grievance in which he contended that the Carrier violated the applicable labor agreement when it failed to use him to operate the crane. He requested compensation in the amount of eight hours at the straight time rate. The Carrier denied the grievance.

1. In its submission brief, the Organization also requested compensation in the amount of eight hours at the straight time rate for R. Shutz (the name is spelled "Schutz" in the Carrier's submission brief, pp. 2, 4, and 7) but withdrew the claim at the Referee hearing. Hence, we are no longer concerned with the claim of R. Shutz (Schutz).

2. This case turns on the question whether the Carrier violated Rules 27(a) and/or 27(c) of the labor agreement by assigning the storehouse employe instead of the Claimant to operate the crane in question for the purpose of rerailing the car. For the reasons hereinafter stated, we hold that the answer is in the affirmative.

Said Rules read, as far as pertinent, as follows:

> **"Rule 27(a):** Regularly assigned wrecking crews, including engineers will be composed of carmen, where sufficient men are available . . ."
>
> **"Rule 27(c):** * * * For wrecks or derailments within shop or yard limits, sufficient carmen will be called to perform the work when local or yard forces are unable to correct the condition."

A careful examination of the two Rules has satisfied us that Rule 27(a) clearly and unambiguously prescribes that regularly assigned wrecking crews must be composed of carmen, provided sufficient men are available. Supplementing this Rule, Rule 27(c) plainly and unequivocally requires that for wrecks or derailments within shop or yard limits sufficient carmen must be called when local or yard forces are unable to correct the conditions. Accordingly, there can be no doubt that wrecking work within shop or yard limits belongs to the carmen's craft, except when (i) sufficient carmen are not available or (ii) local or yard forces are able to correct the condition themselves. It follows that if local forces are unable to correct the condition and wrecking equipment must be used, the operating of such equipment is work belonging to carmen, provided they are available. See: Awards 222 and 1363 of the Second Division.

Applying the above principles to this case, we have reached the following conclusions:

The record shows that local forces were unable to rerail the car under consideration and that a crane had to be used. The fact that the crane was assigned to the storehouse department is immaterial. Essential is that the local or yard forces were unable to correct the condition in question themselves and that equipment had to be used. The operation of such equipment was work belonging to the carmen's craft under Rule 27(c). It is undisputed that the Claimant was available for the work here in dispute. Hence, he was entitled to it.

In summary, we find that the Carrier violated Rule 27(c) by assigning the storehouse employe instead of the Claimant to operate the crane in question.

3. In enacting the grievance procedures of Section 3, First of the Railway Labor Act, Congress intended such procedures to be a compulsory substitute for industrial strife and economic self-help. These procedures are, therefore, to be considered as a system of compulsory arbitration. See: Brotherhood of Railroad Trainmen v. Chicago River and Indiana Railroad Company, 353 U. S. 30, 39; 77 S. Ct. 635, 640 (1957); Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas Railroad Company, 363 U. S. 528, 531; 80 S. Ct. 1326, 1328 (1960); Brotherhood of Locomotive Engineers v. Louisville and Nashville Railroad Company, 373 U. S. 33, 39; 83 S. Ct. 1059, 1063 (1963). Consequently, our functions are arbitral rather than judicial. Paramount to successful arbitration of labor disputes is the need for flexibility in formulating remedies for violations of the labor agreement. Recognizing this fact, this Division as well as industrial arbitrators have frequently held that a party to a labor agreement which has been found guilty of a violation thereof is generally subject to a penalty to insure compliance with the agreement even though the latter does not explicitly provide such remedy. See: Second Division Awards 1369, 2222, 4194, 4200, 4256, 4289 as well as 4312 and cases cited in the latter. We have found nothing in the record before us which would in any way excuse or mitigate the Carrier's violation of the labor agreement. Thus, an appropriate penalty is justified. We are of the opinion that the minimum reporting time allowance of four hours at the straight time rate as provided in Rule 4(c) of

the labor agreement is an adequate penalty in the instant case. The Claimant's additional claim is hereby denied.

AWARD

Claim partly sustained and partly denied in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1963.