Award No. 4541
Docket No. 4322
2-CRI&P-CM-'64

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. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly augmented the wrecking crew with section employes to perform carmen's work at Muscatine, Iowa, on June 1, 1961.

2. That accordingly, the Carrier be ordered to compensate Carmen M. L. Long, O. V. Alexander, R. E. Nicholson, R. Burger and R. H. Hupton 14 hours pay at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: On June 1, 1961, the Chicago, Rock Island and Pacific Railroad Company hereinafter referred to as the carrier dispatched four (4) carmen from the regularly assigned wrecking crew at Silvis, Illinois by truck for a derailment at Muscatine, Iowa. Upon their arrival at Muscatine they proceeded to rerail the derailed cars. While the aforesaid carmen were engaged in this operation five (5) section laborers were used to rerail a truck for one of the derailed cars. While the four (4) carmen were away at lunch the section laborers rerailed another truck for one of the derailed cars. The wrecking derrick and wrecking outfit from Silvis was not used in this derailment.

Carmen M. Long, O. V. Alexander, R. E. Nicholson, R. Burger and R. H. Hupton, hereinafter referred to as the claimants, were regularly assigned members of the Silvis, Illinois wrecking crew and were available to be used at this derailment.

The agreement effective October 15, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that under the language contained in the letter of understanding dated September 4, 1953, reading as follows:

and in Awards 1322, 1482, 1557, 1744, 1763, 2049, 2343, 2716, 3257, 3265, 3859 and others.

As stated it is apparent the organization here seeks to establish that rerailing was done, leaving the inference such would be a violation of this agreement. The fact, however, as conclusively shown, is that even if rerailing were done (which it was not), there still would be no violation of the agreement.

The carrier cannot visualize a sustaining award but it should be remembered the 14 hour figure is a unilateral claim set up by the organization; it has no basis under the agreement, no relation to the amount of work done and no basis in logic. Also the board has consistently ruled only pro rata rate is due for time not worked when a violation is proven—not contended.

The claim fails on all counts. 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 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.

On June 1, 1961, a derailment of three cars occurred at Muscatine, Iowa, and Carrier dispatched four Carmen from Silvis, Illinois to rerail the cars. These were four members of the regularly assigned Silvis wrecking crew, and they travelled by highway truck. The wrecking derrick was not sent out.

Claimants are additional members of the regularly assigned Silvis wrecking crew, and contend that section laborers were used at Muscatine to rerail two trucks in violation of the current agreement.

Rule 28 (a) of the controlling agreement reads as follows:

> "None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed."

There is a letter of understanding dated September 4, 1953 which states in part:

> "I have instructed our local officers that where a wrecking crew is assigned, but where only a truck is used in connection with the above work, the needed men should be drawn from the wrecking crew." (CF. p. 2 of the Employes' Submission.)

The Carrier denies that any rerailing was done by the sectionmen, and further contends that even if it had been done, there is no agreement violation because the Carmen do not have the exclusive right to rerailing work when the wrecking outfit is not called. For this latter proposition, Carrier cites numerous Awards of the Division. We need not review these Awards,

since the letter agreement referred to above does give the right of rerailing to the Carmen who compose the wrecking crew under the circumstances here disclosed.

A question of fact remains to be determined, namely: Did the sectionmen do any rerailing at Muscatine? There is evidence in the record supporting both sides of the dispute. However, the preponderance of the evidence leads us to conclude that the sectionmen jacked and blocked a pair of trucks for the purpose of track repair and did no rerailing.

AWARD

Claim 1: Overruled.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June, 1964.