Award No. 4702
Docket No. 4520
2-MC-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Bernard J. Seff when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

THE MONONGAHELA CONNECTING RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That under the current agree ment the members of the wreck train crew are being improperly paid for service rendered.

2. That the wreck train crew be allowed twenty (20) minutes lunch period without loss of time during their shift and to be additionally compensated for 30 minutes at the time and one-half rate for each day they have been held for eight (8) hours and thirty (30) minutes since June 25, 1962.

EMPLOYES' STATEMENT OF FACTS: Since the Brotherhood Railway Carmen of America assumed representation and signed the agreement effective November 1, 1947 with the Monongahela Connecting Railway Company, hereinafter referred to as the carrier, a wreck train crew has been maintained in accordance with Rule 21.

This wreck train crew always worked the hours from 7 A. M. to 3 P. M., being paid for their twenty (20) minute lunch period.

On June 22, 1962, bulletin 62-35 was posted annulling the wreck train crew assignments effective June 25, 1962.

On June 28, 1962, bulletin 62-39 was posted designating the men who would be called for the wreck crew when needed.

Since that date, the wreck train crew has been used in the same way and manner that they have always been used in the past. A wreck crane derrick and tool car are still maintained on the property. The wreck master's position is still maintained and is held by Mr. Charles Cain. Mr. Cain works eight (8) consecutive hours starting at 7 A. M. and being relieved at 3 P.-M. each day, being paid for his lunch period.

Each day the wreck train is used the wreck train crew is relieved at 3 P. M., being paid for their lunch period. An itemized list, showing the days the wreck train crew was used with the men being relieved at 3 P. M., and also

in question was completely proper. The choice is elementary!

The organization is here asking your honorable board to rewrite the current agreement in the guise of an interpretation to provide for a rule requiring the permanent establishment of a regularly assigned wreck crew, whether such is needed or not. The carrier positively asserts that there is no rule in the current agreement which in any way prohibits the carrier in the establishment or abolishment of assignments, or which in any way conflicts with the carrier's previously described handling of employes temporarily used in wreck service. Certainly, it is obvious that if there had been any such rules, the organization would most certainly have raised same in the discussions on the property. Neither is there any practice in existence that would in any way support the organization's contention. Prior to June 25, 1962, members of the regularly assigned wreck crew were furnished with an eight hour tour of duty, inclusive of lunch, in strict conformity with the application of Section (c) of Rule 6; members of a wreck crew called out on second or third shift, or on car shop relief days, were furnished no lunch at all unless they worked more than five hours, and then they were handled in accordance with Section (a) of Rule 6. The carrier is handling matters in exactly the same fashion today.

There is a well recognized and widely accepted principle that the burden of proof for establishing a valid claim rests with the party making the allegations. In the event a complaining party fails to produce sufficient probative evidence in support of its allegations in a given claim, such claim must fail from lack of evidence. The carrier submits that the organization cannot support its burden of proof in either establishing that the contract has been violated or that there has been in existence an interpretation or practice which in anyway supports its contentions.

The organization's contention is absolutely incapable of support on any basis.

CONCLUSION

The carrier has conclusively hereinbefore shown that the "claim" presented to the board in the organization's July 18, 1963 letter of intention to file an ex parte submission is improperly before the board for adjudication. It has also shown that the claims handled on the property are completely lacking in merit and entirely without foundation under the current agreement or any interpretation or practice with respect thereto. In view of this, the Carrier respectfully requests your honorable board to affirm the carrier's position by the issuance of a denial award.

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.

It is not disputed that Car Shop employes were provided with a normal work day of 8 hours including a 20 minute lunch period without deduction in pay on the basis that they were regularly assigned members of the wreck crew.

In the case at bar certain employes on certain days performed wreck crew service but were not paid for a 20 minute lunch period because the Carrier contends that they were not regularly assigned members of the wreck crew. In justification of its action the Carrier points to the fact a Bulletin No. 62-35, posted on June 22, 1962 permanently annulled the four assignments of Carmen Wreck Crew and Wreck Crane Operator.

The Organization disputes the Carrier's abolishment of the wrecking crew assignment on the basis that there was no change in the way or manner in which the said work is performed. In support of this argument the Organization argues that there has been no change in the amount of wreck crew service performed in that it is alleged that the volume of business is the same and the volume of derailments on the property is the same. The gist of the Organization's argument is that "you do not and cannot abolish something that remains in existence, i.e., the need for the wrecking crew."

For its part the Carrier asserts that during the early years each day's wreck service requirements were generally of such a nature that the wreck crew would not only work the entire tour of duty in the performance of such work, but a substantial amount of overtime on numerous occasions. As time went on the continuing decline in the need for wreck service requirements ultimately reached a point where the Carrier could no longer justify the continuation of such regular wreck crew assignments. Consequently on June 22, 1962 the Carrier by bulletin mentioned above permanently annuled the wreck crew assignments. Since such annulments there have been no regular wreck crew assignments for Car Shop employes and on the various days when the need for wreck service has arisen the Carrier has temporarily used available, qualified employes in seniority order. In other words the Carrier contends that as the result of a marked decline in the need of wrecking crew service, and since the date of the bulletin adverted to supra, June 22, 1962, there is no longer in existence a wreck train crew on the Carrier's property. It should be pointed out that there is no contractual prohibition against annulling assignments or the Carrier's right to abolish these or any other assignments.

It is clear from the foregoing that the resolution of the instant dispute turns on the determination of the factual question as to whether or not there has been a regularly assigned wreck train crew in existence on the times when the alleged violations took place. The Carrier contends that since the regular wreck crew assignments have admittedly been abolished the temporary use of carmen to perform occasional wreck service does not establish employes used in such service as a regular wreck crew.

It would seem from the above that the Organization has not established by the substantial evidence in the record its burden of proof which would be necessary to justify sustaining the instant claims.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April, 1965.

DISSENT OF LABOR MEMBERS TO AWARD No. 4702

It is not a fact, as held by the majority, that ". . . the resolution of the instant dispute turns on the determination of the factual question as to whether or not there has been a regularly assigned wreck train crew in existence on the times when the alleged violations took place . . ." The resolution of the dispute turns on determination of whether the agreement requires that a regularly assigned wreck train crew should be maintained; that it should be is substantiated by Rule 21 which states that "In case of accidents, mechanics sent out with the wrecking outfit will work under the direction of the Wreck Master. While working on a wreck, the **regular crew** assigned to the first shift . . ."

The majority appears to be upholding the carrier because of the latter's ridiculous contention that abolishing the crew is permissible because wreck service is occasional; wreck service on any railroad is occasional or the railroad could not continue in business. The claim should have been sustained.

E. J. McDermott

C. E. Bagwell

T. E. Losey

R. E. Stenzinger

James B. Zink