

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the Missouri Pacific Railroad Company improperly assigned other than wrecking engineer to perform wrecking service when they hired truck equipment with boom from the Salley Construction Company, West Monroe, Louisiana, to rerail cars MRAX 229 and MRAX 272 at Monticello, Arkansas on June 18, 1965.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate wrecking Engineer C. K. Watson in the amount of four (4) hours at time and one-half rate from 4:00 P. M. to 7:30 P. M., June 18, 1965.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, maintains a wrecking derrick and regularly assigned wrecking crew at McGehee, Arkansas, and on June 17, 1965, about 8:00 P. M., a derailment occurred at Monticello, Arkansas, a point approximately 30 miles from McGehee. Two cars, MRAX 229 and MRAX 272, were derailed within the yard limit and near the Blankenship Redi-mix Concrete Plant at Monticello. There was no emergency and the main line was not blocked.

On June 18, 1965, Car Foreman R. O. Rogers, accompanied by two carmen from McGehee, Arkansas, went to Monticello to rerail these cars. They started the rerailing at 7:00 A. M., June 18th, but were unable to perform this rerailing work alone and Foreman Rogers called two more carmen from McGehee who were assigned to the wrecking crew. They arrived at the scene of the derailment and began work at 11:00 A. M., June 18th, however, they were still unable to rerail these cars and Foreman Rogers, instead of calling the Wrecking Engineer, Mr. C. K. Watson, hereinafter referred to as the Claimant, who was available to perform this work, called the Salley's Construction Company of West Monroe, Louisiana, to bring their truck equipment with boom to the scene of the derailment. This equipment from the Salley's Construction Company arrived at the scene of the derailment at 4:00 P. M., June

tion of the crane used at the scene of the derailment. In any event, it is customary and the practice for the owner of a crane to have his own employes who are experienced with the equipment operate the equipment.

In the instant case, the Carrier did not deem it necessary to send the outfit to reraill these two tank cars at Monticello located near the end of a branch line. The rules do not require calling the entire wrecking crew. Rule 120 requires that a sufficient number of regularly assigned crew will accompany the outfit, but the rule obviously applies only when the outfit is dispatched. Rule 120 also states that sufficient carmen and helpers will be called to perform the work in connection with wrecks or derailments within yard limits if they are available. There is no rule which requires the use of members of the regularly assigned wrecking crews for derailments outside of yard limits when the wrecking outfit is not used. It follows that the Carrier was not obligated to call the claimant.

As stated above, the Carrier was not required to call claimant under either Rules 119 or 120. In addition to the fact that the Carrier was not required to call claimant under the rules in the basic agreement, claimant was not entitled to be called by virtue of the fact that he had bid in and been assigned as wrecker engineer for the McGehee outfit. The duties assigned a wrecking engineer by virtue of bidding in th position of wrecking engineer is to operate the locomotive crane, which is a part of the wrecking outfit. In this case, claimant's assigned duties as wrecking engineer at McGehee was to operate the locomotive crane X-101, which is the locomotive crane assigned to and made a part of the McGehee wrecking outfit. As we have seen, locomotive crane X-101 was not needed and was not dispatched to Monticello. For that reason, no necessity existed for calling claimant to perform the duties to which assigned as wrecking engineer since no one was needed to operate locomotive crane X-101.

For the reason stated, the claim is not supported by Rules 119 and 120 nor any other rule in the Shop Craft Agreement. The claim for four hours at the time and one-half rate for work not performed is completely lacking in merit and must be denied.

All matters contained herein have been the subject matter of conference and/or correspondence.

Oral hearing is not requested.

(Exhibits not reproduced.)

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.

The facts disclose that two cars were derailed on the Branch line at Monticello, Arkansas. Carrier states that the point of the derailment was 46

miles from McGehee, Louisiana. The Organization contends that derailment was approximately 30 miles from McGehee. In any event, two Carmen and a Foreman were dispatched from McGehee to rerail the cars which were sunk in Ballast. An additional two Carmen were later dispatched to assist in the work. It would have been possible to have jacked the cars by hand and rerailed them with the aid of the winch truck, which had accompanied the Carmen. However, there was no diesel locomotive at the scene to furnish air for the air jacks and hand jacks would have consumed an unreasonable amount of time. Therefore, Carrier called a small crane from a construction company at Monroe, Louisiana, a point approximately 63 miles from the scene of the derailment. The record discloses that there was a 100 ton wrecking crane located at McGehee. The Organization contends that this wrecking crane and its crew should have been called instead of the small crane from the construction company. The Organization relies on Rules 119 and 120 of the Agreement.

Carrier contends there was no necessity for ordering out the heavy crane which would be accompanied by the Wrecking Engineer (Claimant).

It is the opinion of this Board that if the heavy crane owned by Carrier had been called, and a third party had been permitted to operate the heavy crane, this would have been a valid claim. However, since the Carrier's heavy crane was not used, no valid claim has resulted by the facts established in this instance.

The record discloses that Claimant did not have the exclusive right to the work involved in this instance. (Award 3859 — Award 2049.) In the absence of evidence that Carrier acted in an arbitrary, capricious and discriminatory manner, it is well established that Carrier may exercise its prerogative of management. (Award 4898). The evidence has not been established, in this case, that it was necessary to use the heavy 100 ton wrecking crane located at McGehee for this small job. There is no contention by the Organization that the small crane ordered from the construction company was comparable to the heavy wrecking crane located at McGehee. (Award 1909 and Award 4682). There was also no evidence in the record disclosing that Claimant was familiar with the construction company's crane or that he would have been permitted to operate the same if he had been present. (Award 4686).

Therefore, it is concluded that in this instance, Carrier had the prerogative to use or not use Carrier's equipment. If Carrier's equipment had been used, Claimant's claim would have been valid. It is further concluded that Carmen do not have exclusive right to the work involved herein and that in this instance, the small crane owned by the construction company was needed and not the heavy equipment owned by the Carrier. In the absence of any showing that Claimant could have operated the small crane, there is no question but that this claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April 1968.

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