Award No. 6030
Docket No. 5743
2-C&O-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 41, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (SOUTHERN REGION)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the service rights of carmen H. E. Brown and William Stevens (extra men on tool car force, Russell, Kentucky) and rules of the controlling agreement when Maintenance of Way (section force) crane RC-18 and said crane's regular assigned Maintenance of Way (section men) operator and helper performed wrecking service in violation of Rule 32 and Carmen's Special Rules 157 and 158.

2. That accordingly, the Carrier be ordered to additionally compensate Carmen H. E. Brown and William Stevens eight (8) hours each at the applicable time and one-half rate for such violation.

3. That the Carrier be further ordered to discontinue using said crane and Maintenance of Way operators in the performance of wrecking service.

EMPLOYES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company hereinafter referred to as the carrier owns and operates a large facility at Russell, Kentucky, known as Russell Terminal, consisting of diesel house, shop track and transportation yards where cars are switched, repaired, classified and cars are interchanged from other roads to the C & O lines, 24 hours a day, 7 days each week, where a large number of carmen are employed and hold seniority under Rule 31 of the shop crafts agreement.

The Russell wrecking crew was called at 4:00 A.M. on September 16, 1967 for a derailment in the west bound receiving yard. The carrier utilized the maintenance of way crane RC-18 and maintenance of way operator and helper in clearing said wreck.

Carman H. E. Brown and William Stevens, hereinafter, referred to as the claimants are carried as "extra men on the Russell, Kentucky wrecking

award indicates an entirely different factual situation and also with the involvement of different rules by the employes in support of their position. While they did not mention Rule 32, as they have done in the instant case, in support of that case they refer to Rules 154, 156 and 165. It is carrier's position that Award No. 5191 was erroneous. Even so, such award can have no application in the instant case. It is carrier's further position that Second Division, National Railroad Adjustment Board Awards 2516 and 3695 support its position in the case now before your board.

Attention is also called to the fact that the claim of the employes is excessive in that they are requesting compensation at time and one-half rate for eight hours for each of the claimants when the entire derailment was cleared in a total elapsed time of seven hours and the maintenance of way crane was only used a small portion of this time. Also, in the case of Stevens, he was on duty and under pay at straight time rate commencing at 7:00 A. M. on the date of claim, thereby working four hours during the time for which claim is filed in his behalf.

The employes have brought this claim to this board and are thereby obligated to substantiate their position. This, they have not and cannot do. Carrier has clearly shown that the rules cited by the employes are not applicable and that further the issue in the instant case has been previously raised by the employes and denied by the carrier with carrier making its position quite clear. The employes accepted the carrier's position without further handling under the provisions of the Railway Labor Act. Carrier asks that the claim of the employes be denied in its entirety

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.

A derailment occurred within yard limits at Carrier's facility at Russell, Kentucky known as the Russell Terminal. In addition to calling a wrecking crew, Carrier also used a Maintenance of Way RC-18 crane and its operator and helper to assist in clearing the track.

The Organization contends that the utilization of M. of W. equipment and employes to assist carmen in the re-railment of a train was a violation of the Agreement between the parties.

Carrier asserts that there was no violation of the Agreement, that sufficient carmen were called as required, that the operation of a RC-18 crane in connection with re-railing was not work of the Carman Craft, and that the use of such crane under such circumstances was accepted practice on the property.

Rule 158 of the Agreement provides:

> "When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. **For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work.**" (Emphasis ours.)

The basic issue to be determined in this dispute is whether, under the circumstances and under the interpretation of the second sentence of Rule 158, claimants had the exclusive right to perform the work in question.

Initially, it must be noted that Carrier utilized regular members of the wreck crew in this derailment. Carrier submits, however, that "it was under no obligation to use the employes assigned to the Russell wreck train **since the use of any carmen** would have met the requirements of Rule 158 as this derailment was within yard limits." (Emphasis ours.)

The Board does not agree. It has been almost uniformly held that unless a wrecking crew was called for wrecks or derailments, inside or outside yard limits, there is no exclusive right to the (Awards 3257, 3265, 3859, 4337, 4362, 4901 and 5812).

Where, however, a wrecking crew had been called and wrecking equipment had been used, that work belongs to the Carmen. Under such circumstances there is no distinction under Rule 158 between wrecks outside yard limits and wrecks inside yard limits. See Awards 4337 and 5860.

Carrier's contention that the utilization of the M. of W. crane saved three hours is without merit. As this Board said in Award 5191:

> "The mere fact that work may be expedited by using non-carmen to perform carmen's work does not warrant a violation of the plain terms of the Agreement. Not every such situation is an emergency and the evidence before us is not sufficient to establish such extreme circumstances as to justify calling upon a Maintenance of Way employe for car repairs in this case."

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of November 1970.

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