

Award No. 6032

Docket No. 5827

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. On October 23, 1967, the Chesapeake and Ohio Railway Company violated carman's Special Rule 165 by not providing the Carmen Craft the necessary tools and power machinery whereas the Carmen Craft could properly perform wrecking service, said wrecking service being the sole rights of the Carmen Craft as set forth under Rule 32, Carmen Special Rules 154, 157 and the Understanding thereof, as set forth under date of April 9, 1940, and 158 of the Shop Crafts Agreement, which are controlling.

2. Accordingly the Chesapeake and Ohio Railway Company will provide the Carmen Craft the necessary and proper tools and power machinery instead of using M. of W. (Section) Crane RC-18 and the cranes assigned M. of W. (Section Men) crew in the performance of wrecking service and shall abide by Rule 32, Carmen's Special Rules 154, 157, 158 and 165 of the controlling agreement.

3. Accordingly Carmen Paul Rece and H. E. Brown, who hold bid in assignment on the Russell Terminal Wrecking Crew, be further compensated one (1) hour preparatory time at straight time rate and fourteen (14) and one-half ($\frac{1}{2}$) rate for October 23, 1967; account the Chesapeake and Ohio Railway Company using M. of W. crane RC-18 and its assigned M. of W. sectionmen crew in wrecking service in violation of Rule 32, Carmen's Special Rules 154, 157 and the Understanding thereof as set forth under Letter of April 9, 1940, 158 and 165 of the Shop Crafts Agreement, which is controlling.

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,

the carrier deemed it necessary to use the tool car derrick WC-24 in this instance, then the regularly assigned derrick engineer Paul Rece would have been called to operate the crane; however, there is no assurance that Brown would have been called as his standing in being used for tool car service depends on the absence of one of the regularly assigned crew. Although there were two Maintenance of Way employees assigned to the RC-18, the records show that only the operator performed service in connection with loading and unloading freight car trucks on the date in question. Also, as previously stated both of the Claimants worked their regular assignments on that date thereby being compensated for a portion of time covered by the instant claim.

The employees have brought this claim to this Board and are thereby obligated to substantiate their position. This, they cannot do.

CONCLUSION: The carrier has shown:

(1) That there has been no violation of the Shop Crafts Agreement on their part.

(2) That the rules cited by the employees are not applicable to the instant case.

(3) That the work here in contention is not, and could not, be considered as wrecking.

(4) That the carrier is not obligated to call the regular wrecking outfit for the type of work here involved.

(5) That the claimants have no contractual rights to the work performed in this instance.

(6) That the claim is without merit and should 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 employee or employees involved in this dispute are respectively carrier and employee 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 October 9, 1967, a derailment occurred about 43 miles from Russell, Kentucky. Wrecking crews were called, and after pulling the derailed cars clear of the right of way they were relieved from wrecking service on October 10, 1967.

On October 23, 1967 "car trucks" loaded in gondola cars were sent to the point of derailment along with a Maintenance of Way RC-18 Crane. The crane operator and a helper accompanied the crane. The crane was used to unload the undamaged "car trucks" from the gondolas, and to load the wrecked "car trucks" onto the gondolas to be returned to Russell for scrapping.

On October 24, 1967, regularly assigned wrecking crews returned to the point of derailment to resume wrecking service, and to retruck the cars left at the point of derailment.

The issue presented in this dispute is whether, under the circumstances, the loading and unloading work performed by the M. of W. crane and its crew was work that should have been performed by carmen.

At the time in question (October 23, 1967), there is no indication that a wrecking crew was called nor is there any evidence that wrecking equipment was required to perform the work. Under these circumstances, absent a contractual agreement, the awards are clear that the performance of such work by other than carmen is not a violation of the Agreement. See Awards 4131, 5197, 5438 and 5768.

AWARD

The claim is denied.

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.