

Award No. 6200
Docket No. 6050
2-SCL-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jesse Simons when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current applicable Agreement the Carrier violatively assigned other than Carmen to perform Carmen's work.

2. That accordingly the Carrier be ordered to compensate Carmen H. E. Hamrick and A. Morrison five (5) hours at time and one-half pro rata rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The Seaboard Coast Line Railroad Company, hereinafter referred to as the Carrier, maintains a wrecking crew and two (2) derricks at Hamlet, North Carolina, namely, the two hundred fifty ton and the one hundred ton derrick.

On February 3, 1969, Car No. TTX 250741 was derailed within yard limits at Hamlet, North Carolina. The trucks on the west end were out from under the car, leaving the car resting on the rail. The east end of the car was also derailed.

The auxiliary crew of the Hamlet Wrecker Outfit consists of one engineer, one fireman and four (4) groundmen. On the day in question the engineer, fireman and two (2) of the groundmen were used for the derailment.

Other than carmen were used to augment this short crew and performed carmen's work to the exclusion of regularly assigned crew members.

The other two (2) crewmen (claimants H. E. Hamrick and A. Morrison) were available at time of derailment.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest officer so designated, all of whom have declined to make satisfactory adjustment.

Rule 103 does not exclusively assign rerailing of locomotives and cars to the carmen's craft, and there has been no violation of the rules.

CONCLUSION

Carrier reaffirms its position that there has been no violation of the Agreement in this instance, and respectfully requests that your Board deny this claim in its entirety.

The respondent carrier reserves the right, if and when it is furnished ex parte petition filed by the petitioner in this case, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered herein.

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 dispute presented here for decision divides into two separate issues.

First, did the Carrier on February 3, 1969 violate the applicable Agreement, when it called the Engineer, the Fireman and two of the Ground Men, all members of the Hamlet Auxiliary Wrecking Crew (AWC), when a derailment occurred within yard limits, and where a wrecker was used, but did not call the two Claimants, members of the Auxiliary Wrecking Crew?

Rule 103 (c) is controlling, and the pertinent portion of it is cited as follows:

"(c) Within yard limits, when the wrecker is used, the necessary number of members of the Wrecking Crew will be called to perform the work."

The Organization argues that the "necessary" number required, as per 103 (c) cited above, on February 3, 1969 was the entire crew including the two Claimants, who were not called. The Organization's contention rests on the following:

- 1) That the next day, February 4, 1969 the **entire wrecking crew was called**, including claimants;
- 2) That Carrier states that the work to be performed the second day, February 4, 1969 "was minor in nature compared to that done the previous day" (page seven, Carrier's Original Submission);

- 3) That if Carrier deemed five men to be necessary to do the remaining "minor" work on the second day, it follows that Carrier should have deemed necessary assignment of the entire work crew on the first day, February 3, 1969, when presumably the bulk of the rerailment work was performed.

The logic set forth above is highly persuasive, but standing by itself is not sufficient to justify this claim.

However, the record discloses some confusion in Carrier's position, particularly noted in Carrier's Original Submission wherein Carrier seemingly has the two days when work was performed on this rerailment, reversed. Carrier's Brief states that on the second day, February 4, there were two ground men from the Auxiliary Wrecking Crew, whereas in fact there were four; and correlatively the same Brief suggests that the whole Auxiliary Wrecking Crew including the two claimants was assigned to the derailment on the first day, February 3, whereas the crew called on February 3 did not include the two Claimants.

How such confusion could have crept into Carrier's Brief is beyond the Board's ability to unravel, but it is suggestive on the one hand that perhaps the issue was not truly joined on the property. On the other hand it tends to add weight to the thrust of the Organization's reasoning referred to previously, i.e., that if the full Auxiliary Wrecking Crew was deemed "necessary" on the second day to perform the remaining **minor** work of rerailment, then a full Auxiliary Wrecking Crew was "necessary" on the first day, when the major portion of this work was performed.

The second issue presented by this claim is whether, in fact, on February 3, 1969 certain work was performed by employees other than Carmen, which work would have been performed by the Claimants as members of the Auxiliary Wrecking Crew had they been called, which work is work generally performed by the Wrecking Crew.

It is noted that in the March 10, 1969 letter from Local Chairman to the Master Mechanic, Organization's Exhibit A, there appears a statement regarding the February 3 situation, as follows:

"These two Carmen were assisted in pulling the line block, cable, and truck sling by the section crew . . . thus performing Carmen's work.

This Section Crew also performed Carmen's work when they placed a bat wing on the rail . . ."

Organization's Exhibit B, the March 12, 1969 letter of Master Mechanic to the Local Chairman, refers to Section Crew's "**handling**" cables and replacers. The Board notes, and attaches considerable significance to, the absence of a denial of the original allegation that Section Crew members "**assisted in pulling** line block, cable and truck slings," and the further absence of denial that Section Crew members "**placed a bat wing on the rail.**"

In later correspondence and in Carrier's brief the verb "handling," which appeared in the first letter of Master Mechanic in denying the Organization's claim, evolved into the verb "carrying," by section men of block, cables and replacers.

The Board is satisfied that the original allegations contained in the February 3, 1969 letter of the Local Chairman, composed as it probably was as a result of close collaboration between the Local Chairman, and members of the Auxiliary Wrecking Crew, probably reflects what actually occurred at the site of the derailment on February 3, 1969. In addition, the absence of a flat denial by the Master Mechanic in his March 12, 1969 letter, taken together with the use of the word "handling," which then evolved later into "carrying," are all suggestive either that Carrier did not know, or had some other reason for using such general terms. The very looseness and vagueness of these words strongly suggests that the original allegation set forth in the letter of the Local Chairman to the Master Mechanic is accurate.

In view of all of the above, the Board finds that on February 3, 1969 certain tasks were performed by employees other than members of the Auxiliary Wrecking Crew, which would have been performed by the Auxiliary Wrecking Crew had all of them been called, and that such work was generally recognized as Carmen's work when working as members of a Wrecking Crew, thus the "necessary" number of persons were not assigned to the Wrecking Crew and thus 103 (c) was not satisfied and therefore the Board sustains claim one of the Organization.

As to the second claim, the Board for the reasons set forth above, finds just cause to make the two Claimants whole by directing that they be compensated for the difference between what they actually earned on February 3, 1969, and what they would have earned had they been assigned to work as part of the Auxiliary Wrecking Crew on February 3, 1969 to the rerailing work in the Hamlet yard.

AWARD

Claim sustained in accordance with the above finding and opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1971.