Award No. 6325
Docket No. 6085
2-A&S-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 154, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

THE ALTON & SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly augmented the wrecking crew with employes of a private company.

2. That accordingly, the Carrier be ordered to additionally compensate Carmen J. Thier, G. Peach, K. Rettinghouse and W. Randant in the amount of nine (9) hours each at the time and one-half rate of pay.

EMPLOYES' STATEMENT OF FACTS: The Alton and Southern Railway Company, hereinafter referred to as the Carrier, operates a switching and transfer railroad in the East St. Louis, Illinois area. It runs approximately twenty miles.

In the early morning of December 12, 1969 the Carrier had a derailment involving freight cars C&O 462273, L&N 6009, and CABX 470410. The Carrier's wrecking crew was called out at 8:00 A. M., composed of six men. They worked until 5:00 P. M. At the same time, Loren Isringhauser and three of his employes were called in with bulldozer-crane to assist in the wrecking service. He and his crew also worked from 8:00 A. M. to 5:00 P. M.

J. Thier, G. Peach, K. Rettinghouse and W. Randant, hereinafter referred to as the Claimants, are employed by the Carrier as Carmen. They were off duty and available for service at the time here relevant.

On date of December 4, 1969 Bulletin No. 74-69 was posted abolishing two Alternate Wrecking Crew Positions effective at close of shift on December 10, 1969.

Alternate wrecking crew positions are assigned for use when regular members of the crew are not available or additional help is needed in wrecking service. There has been no restriction on the number of alternate wrecking crew positions so assigned.

ume of business is dependent upon the service which can be furnished shippers in the form of prompt handling of the cars.

The management of the Railroad is entitled to take those steps necessary, consistent with its obligations to its employes, to insure a profitable operation. The Carrier has found it necessary to use off-track equipment in addition to its wrecking outfit to clean up wrecks and derailments quickly in order to reduce delays in handling cars and remain competitive in the handling of the cars through the St. Louis Gateway.

For the reasons stated, the claim should be denied.

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 Carrier operates a switching and transfer railroad in the East St. Louis, Illinois area. The Carrier connects the Eastern Trunk lines with certain Western and Southwestern Trunk lines and runs approximately twenty miles.

On December 12, 1969, Carrier's wrecking crew was called at 8:00 A. M., composed of six men. The Carrier also used an outside contractor and three of his employes with a bulldozer-crane to assist in the wrecking service.

The Employes contend that the Agreement was violated when the Carrier augmented the wrecking crew with employes of a private company. The Claimants were employed by the Carrier as Carmen and were off duty and available for service.

Carrier contends that their action was consistent with practical railroading and cite awards of this Division to support their position.

Rule 51 of the effective Agreement between the parties reads:

> "When crews are called for wrecks or derailments in the yards or on the road they shall consist of mechanics and helpers of the craft."

On November 13, 1963, the parties entered into a **Memorandum of Agreement** involving the application of Rule 51. This Agreement reads in part:

> "Wrecking crews and wrecking derrick operators shall be composed of carmen of the craft. * * *
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> * * * * *
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> The parties further recognize that this carrier expects to begin operation of a new electronic hump yard sometime during the year 1964, and that the derrick was purchased so that any wrecks or de-

railments occurring at critical points in the new yard could be cleared up with the least possible delay. In recognition of this need, the parties agree that if a derailment or wreck occurs on any track of the new yard, the result of which is an interruption of the classification operation, any carman or carmen helpers available, employed in the yard or on the repair track may be used in wrecker service in such emergency."

The Carrier contends that the contract including the **Memorandum of Agreement** of November 13, 1963 does not require the Carrier to call Carmen who are not members of the wrecking crew for wrecks and derailments. We cannot agree with Carrier's position. Carrier's action was a clear violation of the Agreement. The Carrier contracted and agreed that all wrecking crews shall consist of Carmen.

Recent Second Division N.R.A.B. Award 6257 (Shapiro) reads in part:

"Our holding in Award 4190 declared that the determination as to the need for a wrecking crew was a matter of management discretion and judgment but cautions that this may be successfully challenged if the Carrier's action in this regard is 'arbitrary, capricious, discriminatory or an abuse of managerial discretion.' When claimants charge that Carrier's action was in derogation of a specific contractually provided benefit to which they believed they were entitled, it becomes incumbent upon the Carrier to offer a reasonable explanation for its need to utilize other employes and most particularly total strangers to the Railroad in place of them. Its failure to do so brings it within the limitations upon its use of its discretion and judgment referred to hereinabove."

We will sustain the Claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1972.

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