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Form 1.

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6454
Docket No. 6290
2-SCL-CM-'73

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

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That under the provisions of the controlling agreement, the Carrier on June 19, 1971 violated the agreement when it used the services of Steel City Erection Company's Mobile wrecker unit and two employees of that company to assist Carmen in rerailing cars TTX 477837, TTX 102117, and S.P. 650694, at Southern transfer switch on the west main in the Birmingham Yard.
2. That accordingly the Carrier be ordered to compensate the following Carmen three and one half ($3\frac{1}{2}$) hours at overtime rate, Jesse Johnson and D. R. Bazzels.

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 employees 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 Organization states that three cars were derailed at a transfer switch on the main line within the yards at Birmingham, Alabama; that the carrier employed a mobile derrick crane with two operators from an outside concern; that three carmen were called for the derailment. The claim is made that two additional carmen should have been called to replace the two outside crane operators, for a period of $3\frac{1}{2}$ hours. It is not clear from the record why overtime pay is demanded unless we assume that the claimants would have been called from the overtime board.

The carrier states that at approximately 7:10 A.M., two cars were derailed; that the hired crane arrived at 8:45 A.M., that the cars were rerailed by 10:20 A.M., a total of one hour and thirty five minutes. The carrier states that a crane was needed but that the nearest carrier owned derrick was at Atlanta, 160 miles away, and would require 10 hours to reach the derailed cars; that the need to clear the main line promptly was an emergency which justified the rental of the outside off track automotive type crane. In addition, it is asserted that the outside crane

operator and oiler who came with the crane had to be used because they were familiar with the operation of this expensive equipment. The carrier also argued that it complied with Rule 103 (c) by calling three carmen who were sufficient for the rerailling, and contends that if it called all the carmen employed at the yard, no more than 3 would have been required to assist while the crane did the lifting. The carrier argued that the claimants are not members of a wrecking crew, are not experienced in operating this type of crane; that a wrecker derrick was not used, that the carrier has the right to decide when to use a wrecker derrick and that none but carmen did carmen's work.

The Organization's position is that the carrier has the obligation to have equipment and tools of the carmen's work where needed at all times and that carmen should be trained to use and operate the equipment. It is also argued that Rules 15, 26, 39, 99, 100, 103 and 114 have been violated, particularly Rule 103, dealing with wrecking crews.

After examining the Rules referred to by the Organization, it is our opinion that Rules 15, 26, 39, 99, 100 and 114, relate to the Organization's objection to the two outside crane operators because they are not carmen, are not members of the carmen's union, hold no seniority and, in short, are not carrier's employees of any classification.

The Agreement does not require that the carrier maintain a wrecker derrick or where it should be stationed. This derailment took place in the yards. The nearest wrecker derrick and crew were 160 miles away. "Emergency", may be a relative term. When the derailment occurred, there may not have been an immediate emergency. An emergency would develop, however, if the main line was blocked for the ten hours it would take for the equipment to arrive from Atlanta. The carrier was justified in renting the automotive crane to reraill the cars without delay and did not violate the agreement in so doing.

Rule 103, headed "Wrecking Crews" is confined to the rights of the employees who are assigned to such crews. Claimants were not assigned to a wrecking crew. Claimants were not wreck derrick engineer and firemen as referred to in Rule 100 (a).

The work required wrecking equipment. Rule 103 (c) requires the necessary number of wrecking crew members to be called when the wrecker is used within yard limits but no wrecker and crew was available. The next sentence of this rule requires only the use of sufficient carmen within yard limits. Rule 103 (d) permits the use of men of any class as additional members of wrecking crews to perform work consistent with their classification, thereby indicating that the work need not be performed exclusively by carmen. If the wrecking crew was available, the claimants may not have been called.

Award No. 2343 of this Division and subsequent Awards have held that rerailling cars within yard limits, in general, is not exclusively carmen's work. In our Awards Nos. 5768 and 5812, it was decided that other than carmen may operate a crane or wrecking derrick when circumstances justify such action.

Considering the facts of this case, we need determine only, "whether or not the claimants should have been called". No proof has been offered to show that they could have taken the place of the two outside employes to rerail the cars without delay. We find that in this situation and with these particular claimants the carrier did not violate the Agreement by failing to call them. Obviously, sufficient carmen were called.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Kitten
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1973.