

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Current Agreement of January 1, 1943, (formerly Virginian) as subsequently amended, when on September 8, 1980, they failed to call the regularly assigned Wreck Crew to perform wrecking service near Elmore-Mullens Terminal a Point on the Norfolk and Western Railway System, but instead called several Employees from other Crafts i.e., Supervisor and Maintenance of Way, including one (1) Substitute Derrick Wreck Car. Furthermore, Carrier permitted one (1) of the M of W Employees to operate the Clamshell, which is converted into a Substitute Derrick Wreck Car, by removing cotter key and bolt from boom, including the bucket, attaching hook(s) and various other attachments to perform wrecking service.
2. That the Norfolk and Western Railway Company failed to call the four (4) regularly assigned members of the Wreck Crew, including Wreck Engineer to operate the Substitute Wreck Car.
3. That the Norfolk and Western Railway Company did violate the Rules of the Current Agreement, particularly, Rule Nos. 113 and 114, including Article VII of the December 4, 1975 Agreement.
4. Prior to the December 4, 1975 Agreement, the Wreck Crew consisted of two (2) Carmen, one (1) Helper Carman as Groundman, and (1) Carman Derrick Engineer.
5. That because of such violations and capricious actions, the Norfolk and Western Railway Company be ordered to compensate Carmen C. C. Burnette, H. R. Karnes, Carman Helper W. G. Wolfe, (Members of the regularly assigned Wreck Crew) and Carman E. W. Dehart, seven (7) and one-half (1/2) hours at the overtime rate of pay, account, of loss suffered due to such violations, and restore the same number of regularly assigned members of the Wreck Crew as was in effect December 4, 1975.

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 employees 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.

Elmore, West Virginia maintains a repair track and a train yard. In September, 1980, four carmen were employed at this location, all of whom are claimants. On September 8, 1980, two N & W cars ran away and were derailed at Lynco, West Virginia. A wreck truck was dispatched with one wreckmaster, one carman, one carman helper and two laborers. A clamshell crane was also dispatched. Maintenance of Way personnel, using the clamshell crane, rerailed the two cars before the wreck truck and crew arrived at the scene.

Employees state that prior to December 4, 1975, there existed at Elmore a wreck crew of three carmen and one carman helper. This wreck crew was abolished in May, 1979, and the derrick wreck car was removed. It is the position of the Employees that the clamshell crane was in effect a Derrick Wreck Car, which on September 8, 1980, should have been operated by the Claimants, who were carmen.

Rule 110 describes work belonging exclusively to carmen. It does not include wrecking service as exclusive carman work.

The two cars here involved were derailed outside yard limits. It has been consistently held that on this property carmen do not have exclusive right to derailment work outside yard limits.

Rule 113 reads as follows:

"Sufficient carmen will be assigned to regularly assigned wrecking crews to perform such work as is generally recognized as carmen's work where men are available ..."

Two carmen were assigned to the wreck truck that was dispatched to the scene where the two cars were derailed. There is no evidence that more than two carmen were required.

The overriding fact in this case, however, is that no wrecking crews existed at Elmore on September 8, 1980. A wreck truck is not equipped with a derrick or other heavy equipment necessary to rerail cars. Rules 113 and 114 are, therefore, not applicable.

Since carmen do not have exclusive right to derailment work outside yard limits and since no wrecking crews exist at Elmore, the operation of the clamshell crane by Maintenance of Way employees violated no rule in the schedule agreement between the parties. Furthermore, Rule 110 applies to building, repairing, inspecting, etc. of train equipment. It does not grant carmen exclusive right to operate cranes, especially outside yard limits. A clamshell crane is not, in any event, a Derrick Wreck car.

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Award No. 10102
Docket No. 9684-T
2-N&W-CM-'84

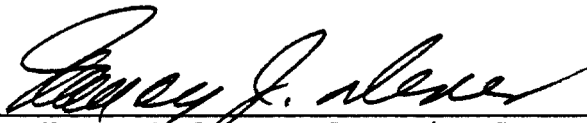
Article VII of the December 4, 1975 Agreement provides that where "a carrier utilized the equipment of a contractor (with or without forces) for the performance of wrecking service a sufficient number of the carrier's assigned wreck crew ... will be called to perform the work ... the number assigned to the carrier's wrecking crew for the purpose of these rules will be the number assigned as of the date of this agreement". No equipment of any contractor was utilized to rerail the two cars. No contractor was called to the scene of the derailment. It follows that Article VII is not applicable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 26th day of September 1984.