

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the controlling Agreement, as amended, particularly Rule 105-2, when they failed to call the full crew when the wrecking derrick outfit was ordered for service at a derailment outside of the yard limit.

2. That accordingly the Carrier be ordered to additionally compensate Carman I. D. Kingsley in the amount of sixteen and eight-tenths (16.8) hours at the applicable straight time rate of pay for violation of December 12, 1982.

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 employes 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.

A mobile crane was dispatched outside the yard limit to Arkansas City, Kansas, on December 12, 1982 to reraill two (2) freight cars and to replace a trailer on one (1) of the flat cars.

From its home point in Wellington, Kansas, the mobile crane is a bulletined position for three (3) regular assigned and one (1) relief crew members.

It is undisputed that the mobile crane and crew perform a variety of services basic to both emergency road service work and wrecking service. The mobile cranes are used almost exclusively to perform emergency road service for efficiency purposes. Therefore, everytime a mobile crane is used, it is not for wrecking service and the number of assigned crew members varies according to the type of work performed.

There is no dispute that the type of work performed was wrecking service. Carrier assigned one Carman, headquartered at Arkansas City, who is not a regular assigned member to crew.

The issue is whether the mobile crane constitutes a wrecking derrick outfit as contemplated in Rule 105, paragraph (b)2, with respect to manning of the mobile crane. Rule 105, paragraph (b)2, states in pertinent part:

"When the wrecking derrick outfit is ordered for service at a wreck or derailment outside of yard limits, the full crew, if available, will be used. It will not be necessary for all or any portion of the regular derrick crew to accompany the wrecking derrick outfit to the scene of the wreck or derailment, if other means of transportation is available and desired by Management; however, no member of the regularly assigned wrecking crew, taking into account all other earnings during the same period, will be paid less than he would have earned had he accompanied the wrecking derrick outfit to and from the scene of the wreck or derailment."

Several years ago a wrecking derrick and mobile crane were in operation at Wellington. However, the record shows there is no longer a "wrecker derrick" assigned to this location.

The Organization contends the mobile crane is a wrecking derrick for the purposes of applying Rule 105-2 when it is used in wrecking service.

The Organization also contends that the nature of the work determines whether a piece of equipment is used as a wrecking derrick or not. Further, the Organization contends the severity of the wreck or derailment determines the type of equipment dispatched. The Organization contends it does not matter whether the regular big on-track wrecker derrick, which is sent on the majority of big wrecks that require a heavier crane, or the off-track mobile crane is sent; both are wrecker derricks.

Carrier contends that the term "wrecker derrick outfit" is not a generic term and, as such, the Rule in question does not apply to the manning of a mobile crane.

Carrier also contends the application of Rule 105 has heretofore applied only to wrecking derricks because the two pieces of equipment are treated as separate entities. In support thereof, Carrier asserts there are distinct differences between a mobile crane operator and a member of the derrick crew.

In locations where there is both a wrecking derrick and a mobile crane, there are differences in the way both positions are advertised. Positions for manning are bulletined separately. Mobile crane positions have a position number and wrecking derrick crew positions do not; wrecking derrick positions are advertised separate and apart from any other position while mobile crane positions are advertised as combination mobile crane/repair track Carman positions; members of the wrecking crew are not allowed to bid on mobile crane positions and vice versa.

Carrier asserts a distinction between the inherent design, capabilities and equipment features of on-track wrecking derricks as opposed to off-track mobile cranes in arguing that mobile cranes were not intended to fall within the purview of Rule 105.

Finally, Carrier argues there has been no historical recognition that wrecking derricks and mobile cranes are considered the same as evidenced by several Local Agreements and understandings cited.

The Board notes that all of the distinctions presented by Carrier apply in situations where both a mobile crane and wrecking derrick are assigned.

In the instant case, the record is replete with evidence that any understanding or practice existed on the property which considers mobile cranes when called for wrecking service the same as "outfits." The Board agrees that the mobile cranes are not "outfits" in the historical sense.

However, in the Board's opinion, it is significant that the wrecking derrick was removed from the Wellington site several years ago. Although the record indicates that the mobile crane performs other services, it is apparent that the mobile crane has been used exclusively in Carrier's wrecking service for a number of years at this facility. Furthermore, the crew is a regular crew.

Therefore, the Board is not persuaded that the presence of a wrecking derrick or assigned wrecking crew solely determines the existence of wrecking crew assignments. See Second Division Awards 10162 and 10080.

The facts establish the derailment required a full crew to man the mobile crane to perform wrecking service. It is also undisputed that Claimant, a regular crew member, was available to join the other regular crew members.

Since the mobile crane is considered suitable for wrecking purposes, the Board reasons the mobile crane crew did perform the duties of a wrecker derrick and the entire regular crew should have been assigned.

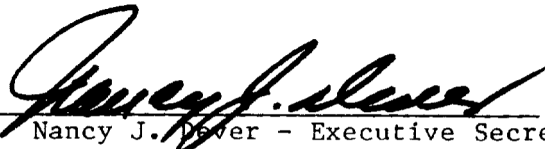
Accordingly, the Claim will be sustained at the pro rata rate of pay, in keeping with accepted practice.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of March 1987.

DISSENT OF CARRIER MEMBERS
TO
- AWARD 11204, DOCKET NO. 10949
Referee Stallworth

The conclusions of the Majority in this case are in serious error.

A factor which evidently influenced the Majority in its decision was its incorrect conclusion with respect to the evidence the Carrier presented concerning differences in the way "mobile crane" and "wrecking derrick" positions have historically been advertised. The Majority stated that "all of the distinctions presented by Carrier apply in situations where both a mobile crane and wrecking derrick are assigned".

Some of the evidence (bulletins, written understandings, etc.) presented by the Carrier involved locations at which both a "wrecking derrick" and a "mobile crane" were assigned at the time of the written evidence. Other evidence presented by the Carrier clearly followed the date that the "wrecking derrick" was last assigned at that particular location or involved a location at which there has never been a wrecker assigned.

An even more serious error of the Majority lies in the following:

The Rule involved in this dispute (Rule 105(b)2) provides that the full crew is to be used "when the wrecking derrick outfit is ordered for service at a wreck or derailment...."

The Organization's allegation was that a "mobile crane" constitutes a "wrecking derrick outfit" and that, therefore, Rule 105(b)2 was applicable when utilizing a "mobile crane" for wrecking or derailment work.

The Carrier's response was that a "mobile crane" is not a "wrecking derrick outfit" and that, therefore, Rule 105(b)2 did not apply.

The sole issue before the Board was whether Rule 105(b)2 did or did not apply.

The only way that Rule 105(b)2 could be applicable is if the "mobile crane" constitutes a "wrecking derrick outfit" or if, in the alternative, by past practice and understanding of the parties, a "mobile crane" has been considered, for purposes of application of Rule 105(b)2, as being a "wreck derrick outfit".

The Majority correctly concluded "that the mobile cranes are not 'outfits' in the historical sense". The Majority has not pointed to any past practice or understanding on the property whereby the parties have considered a "mobile crane" to constitute a "wrecking derrick outfit" for purposes of application of Rule 105(b)2, or that Rule 105(b)2 has been applied to "mobile crane" crews.

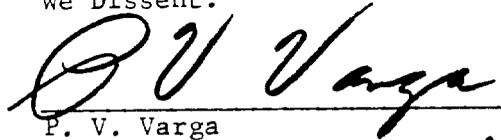
The Majority decision was clearly not based on a literal interpretation of Rule 105(b)2 or on the historical application of that Rule. Rather, the Majority decision presumably was based on the fact that a carman holding seniority at the wreck site was used in lieu of the claimant which, in the Majority's view, showed that "the derailment required a full crew to man the mobile crane to perform wrecking service". If there were a contractual basis for the belief that a carman not assigned to a "mobile crane" crew should not be substituted for a "mobile crane" crew member when the "mobile crane" is used in wrecking service, by the Majority's own admission, that contractual basis does not lie in Rule 105(b)2.

The Majority has stated that it "is not persuaded that the presence of a wrecking derrick or assigned wrecking crew solely determines the existence

of wrecking crew assignments". The fact is that the Rule involved (Rule 105(b)2) specifically involves a "derrick crew" and further provides that the full crew will be sent out "when the wrecking derrick outfit is ordered for service at a wreck or derailment...". There having been no "derrick crew" in existence and no "wrecking derrick outfit" dispatched on the claim date, there was no contractual necessity under this Rule for dispatching the "mobile crane" crew.

The Board is limited to considering only those issues and rules raised in the formal statement of claim after having been handled in the usual manner on the property. See, for instance, Third Division Awards 15523, 17512, 18239, 19790, among others. The Board has no "equity powers" to decide issues on the basis of some unnamed concept or implied contractual provision. The Majority has clearly exceeded its jurisdiction.

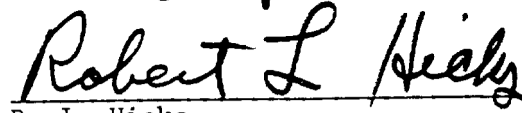
We Dissent.



P. V. Varga



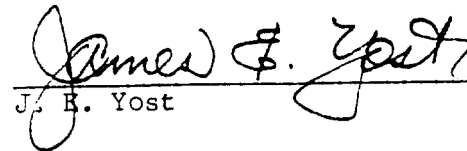
M. W. Fingerhut



R. L. Hicks



M. C. Lesnik



J. E. Yost

