Award No. 1327
Docket No. 1246
2-GC&SF-CM-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That under the current agreement it was improper to substitute employes other than carmen together with a Brown Hoist to rerail AT&SF Car No. 185751, at Dougherty, Oklahoma, on June 25, 1947.

2—That accordingly, the carrier be ordered to additionally compensate Carmen-Wrecking Crew A. L. Brown, J. S. Paschal, G. W. Johnson, J. S. Brown, T. C. Barker, R. J. Glenn and W. B. Mustin, each in the amount of time from 5 P. M. on June 24th until 2:40 A. M. on June 26, 1947, in accordance with the current agreement less the amount of time these employes each worked at their home station within the same spread of hours.

EMPLOYES' STATEMENT OF FACTS: At Cleburne, Texas, the carrier maintains a wrecking outfit and a regular assigned wrecking crew, composed of Carmen A. L. Brown, J. S. Paschal, G. W. Johnson, J. S. Brown, T. C. Barker, R. J. Glenn and W. B. Mustin, hereinafter referred to as the claimants, whose regular assigned hours were from 8 A. M. to 12 Noon, and 12:30 P. M. to 4:30 P. M., on the rip track, six days per week.

The carrier also maintains at this shop point a Brown hoist crane, the capacity of hoist being about 37 tons, and C. E. McCandless has been assigned to operate said crane since October, 1942. This employe is paid on the basis of $265.10 per month, and he has never been carried on the carmen's seniority roster, nor has he ever been a member of the Cleburne wrecking crew.

The carrier's AT&SF air dump car No. 185751 was derailed at Rock Crusher, three miles south of Dougherty, Oklahoma, and the carrier acted to forward the Brown hoist crane to that location ahead of the operator, but the operator thereof, C. E. McCandless, was instructed to proceed on Train No. 16, at 5 P. M. on June 24, 1947, to Dougherty, about 151 miles north of Cleburne, to rerail said car No. 185751, and arrived at Dougherty about 3 A. M. on June 25. Mr. McCandless fired up this Brown hoist crane, then moved to Rock Crusher on local south, started to rerail said car about 11 A. M. with additional assistance provided by the carrier, of Car Inspector J. B. Hendricks and Carman Helper Eddie Hale, together with Section

The carrier challenges, as without support anything the employes submitted to it in their handling of the claim on the property, the specific time claim contained in their notice to the Board, viz., "from 5:00 P. M. on June 24 until 2:40 A. M. on June 26, 1947." In all their handling with the carrier's officers, the claim has been merely for "the difference in pay of what they did earn at Cleburne and that of what they would have earned if they had of made this trip."

The carrier reasserts that Part I of the employes' claim that the use of other than carmen to assist in the rerailment of this car was improper and that in the absence of such employes, the carrier was obligated to send the Cleburne wrecking derrick and crew a distance of approximately 150 miles, is not only without support of the agreement, but would be imposing an uneconomical condition upon the management and is an attempt to usurp the prerogatives of the management without the assumption of responsibility. Moreover, the request is tantamount to asking the Board to write a new rule and the carrier respectfully reminds the Board that on different occasions it has recognized and acknowledged that it is without authority, under the Railway Labor Act, to amend or make a rule. See Award 1122 between System Federation No. 13, Railway Employes' Department (A.F. of L.), and the D&RGW. This principle was also sustained by Award 2491 of the Third Division covering dispute between the Brotherhood of Railway and Steamship Clerks and the Lehigh Valley Railroad Company in which that Board stated:

> "It may be as we have indicated that the contract did not contemplate a situation arising such as we have here and for that reason provisions governing such a situation were not included. But we cannot supply that which the parties have not put in the agreement. **We can only interpret the contract as it is and treat that as reserved to the carrier which is not granted to the employes by the agreement.** (Emphasis supplied)

Also see Third Division Award No. 3421 covering dispute between the American Train Dispatchers Association and the Southern Pacific Company—Pacific Lines, in which that Board stated:

> "'. . . It is not within the authority of this Board to alter the terms of an agreement either by including positions not covered thereby or by excluding positions embraced therein. The end here sought by the employes can properly be achieved only through the process of negotiation.'"

The carrier submits that it has established that the claim in this docket is entirely without merit or support of the agreement in that the employes in their Item 1 are, in fact, contending for an interpretation that the agreement covers something that would constitute an amendment rather than a fair construction of the contract, while in Item 2, of their claim, they are requesting pay on a basis entirely different than that on which original request was presented to the carrier and considered on the property.

In the light of the foregoing, and considering that no rule, precedent or practice has been or can be cited to support the contention of the petitioner, the carrier respectfully requests the Board to deny the claim in its entirety.

* * * *

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.

The parties to said dispute were given due notice of hearing thereon.

Based upon the facts of this case we find that under the applicable rules, the carrier had a definite responsibility to call these claimants to perform the wrecking service in question. The job necessitated the use of hoist, jacks and other tools of this craft, as well as the making of repairs to the car involved. No emergency was involved and claimants were available for assignment. A properly equipped wrecking crew was needed and the equivalent, specially recruited. Under Rule 108(C) and the facts of this case, claimants were entitled to accompany this outfit, even though the carrier deemed that the nature and location of the wreck dictated the use of special hoist equipment.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 5th day of August, 1949.