

Award No. 1393

Docket No. 1307

2-IC-CM-'50

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement the work of dismantling freight cars is carmen's work and the carrier should be ordered to assign carmen to perform this work.

EMPLOYES' STATEMENT OF FACTS: At the Johnson car shop, Memphis, Tenn., laborers are being used to dismantle freight cars, and all useable parts, such as truck sides, side posts, side braces, top rails, center plates and side bearings are turned over to the store department for further use.

The agreement effective April 1, 1935, as subsequently amended is controlling.

POSITION OF EMPLOYES: The carrier has declined this claim, basing their action on the fact that they contend the cars which are being dismantled are being destroyed, therefore, the work incidental thereto, is exempted by Rule 127:

Rule 127, reads in part as follows: "Carmen's work shall consist of building, maintaining, dismantling (except destroying freight train cars) . . ."

This rule specifically states that dismantling is carmen's work except when destroying freight cars, and the cars in question are not being destroyed, but are being dismantled and all useable parts are being re-used in repairs to other cars.

To substantiate our claim that the useable parts of the cars are being re-used in the repairs to other cars, we are submitting a letter, signed by Manager of Personnel, G. J. Willingham, as Exhibit "A". As further proof that parts of cars are being re-used, we are submitting a letter of instructions, signed by Mr. G. J. Lechnerer, supt. car department, as Exhibit "B".

In the light of the indisputable facts presented herein we respectfully request the Honorable Members of this Division to sustain this claim in its entirety.

CARRIER'S STATEMENT OF FACTS: During the year 1949, approximately five hundred freight train cars were authorized to be destroyed or scrapped at Johnston Freight Car Shops, Memphis Tennessee, because of

expense of destroying the freight train cars, as, so far as that department is concerned, the cars are retired from active service and scrapped and removed from equipment records. Whether any of the parts removed from the freight train cars during the scrapping process are serviceable or not, has no bearing upon the question at issue in this case, as the physical units scrapped and the process of the disposing of the scrap or salvage is a function of the stores department and not of the mechanical department.

The record herein shows conclusively the laborers utilized in scrapping or destroying the freight cars that were permanently retired from service are within an agreement between this carrier and the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers. It is the practice of other carriers to use laborers to scrap cars and locomotives as evidenced by Second Division Award 359 and Third Division Award 485.

After freight cars on this property are scrapped and/or destroyed by laborers within the scope of agreement between this carrier and the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers at Johnston Freight Car Shops, Memphis, Tennessee, the scrapped material is then turned over to the stores department, at which time any further handling passes from the jurisdiction of the mechanical department to the stores department. The scrap is then in charge of the stores department and any subsequent handling necessary is performed by employees of the stores department while in the stores department accounts excepting where store orders are issued by the stores department to the mechanical department to repair or reclaim some of the salvage for further use. See Third Division Awards 3216 and 3371.

For many years it has been the practice on this property for the stores department to issue store orders to cover repairs necessary to re-condition salvageable parts of destroyed equipment and such work is performed by the respective crafts within the scope of agreement between this carrier and System Federation No 99. The cost of performing such work is added to the stores department accounts when the items are returned to the stores department for further use.

As explained in the carrier's letter of June 15, 1949, to General Chairman Martin, whenever any part is removed from a car awaiting to be destroyed for use on a car being repaired, a mechanic (carman) is used to remove the part. This is in strict compliance with reasoning advanced in Award 339 involving the same parties to this dispute.

The organizations representing the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees who have been performing the respective work described at Johnston Freight Car Shops, Memphis, Tennessee, are requesting that the past practice be continued as reflected by their letters, supra.

There is no rule in the controlling agreement, past practice or award supporting the employees' contention, and 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Insofar as important here Rule 127 provided: "Carmen's work shall consist of building, maintaining, dismantling (except destroying freight train

(cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel . . ." The question presented is whether the freight train cars here involved were dismantled or destroyed. If dismantled the claim should be sustained. If destroyed it should be denied, as coming within the exception. The primary facts are not in dispute. The cars were authoritatively retired from the service as numerical units. Thereafter all parts were removed and turned over to the stores department for future handling, sorting, reissue or sale.

In the absence of any agreeable interpretation of the controlling words they must be given their ordinary meaning. To "dismantle" means to break down, strip, deprive or divest of equipment; or to remove the main fixtures from a machine. To "destroy" means to abolish, break, lay waste, demolish, exterminate or bring to ruin and take away completely the value or usefulness of it.

Award 339 is not directly in point but significant. There it was held that the exception did not apply "when usable parts are removed from cars awaiting to be destroyed." By analogy if, as here, all parts are removed from cars and used with nothing awaiting to be destroyed the exception would not apply. The controlling rule and facts in Award 359 distinguish it from this case.

Under the facts and circumstances here presented the Division cannot conclude that the freight train cars involved were destroyed within the meaning of the exception in Rule 127. Rather the Division concludes that they were dismantled within the meaning of such rule. For the reasons heretofore stated the claim should be and is sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. D. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of July, 1950.

DISSENT TO AWARD NO. 1393, DOCKET NO. 1307

DISSENT OF CARRIER MEMBERS

We the undersigned, dissent from the referee's conclusion and award in Second Division's Docket 1307, Award 1393, for the following reasons:

Rule 127, the controlling rule—"* * * dismantling (except destroying freight train cars) * * *." These cars were retired from all service not only numerically, but were torn down, destroyed, brought to ruin as cars; nothing was left except the dismembered parts. Thereafter all parts were turned over to the Stores Department for disposal. The record does not disclose the number of parts saved for reclamation or the parts otherwise disposed of.

Webster's International Dictionary, Second Edition, Unabridged, defines destroy as follows: "to undo, to unbuild, to ruin the structure, to pull down, to tear down, to raze, to demolish, to ruin completely. Synonyms—destroy, demolish, annihilate, to dismantle." Definition of dismantle: #3—"to tear down; to raze or to destroy." #4—"to take to pieces temporarily; to dismount. Synonyms—see destroy."

The foregoing, in the light of the history of the rule and its application for the past fifteen years, does not support the referee's award. Neither does the circumstance of record in this Division's Award 339 support an affirmative award in this instance. In our opinion, this Division's Award 359 should be persuasive for the reasons hereinafter set forth.

Quoting from the record in Docket 321, Award 339, history of negotiation of Rule 127, which reads in part—"Carmen's work shall consist of building, maintaining, dismantling (except destorying freight train cars)." The employees' original proposal to management contains language reading in part as follows:

"Carmen's work shall consist of building, maintaining, dismantling (except all wood freight train cars)." After conferences between employees and carrier representatives on various dates between February 7th and March 15, 1935, it was agreed to change this language to read as it now appears in the current agreement: "Carmen's work shall consist of building, maintaining, dismantling (except destroying freight train cars) . . ."

A claim was presented to management in 1936 by the former general chairman account of laborers being used in connection with a car destruction program as was done in this case, which claim was denied. Now after fourteen years, a later general chairman revives the dispute contending that the Second Division's Award 339 supports his claim. In that case, the employees did not contend for an application of the rule as they are now contending. To the contrary, quoting from the employees' argument—" * * * shows beyond a doubt that the prime factor was not the destruction of the cars but the obtaining of parts in undamaged condition." It cannot be denied the circumstance of record in the present case shows the prime factor was the destruction of the cars which was accomplished. However, the referee in Award 1393 finds: " * * * Award 339 is not directly in point but significant. There it was held that the exception did not apply * * *. By analogy if, as here, all parts are removed from cars and used with nothing awaiting to be destroyed the exception would not apply. * * *" (Underscoring ours). There is no evidence of record or was it contended by the employees that all parts were removed from the cars and used; at least no substantial proof was furnished to this effect other than the employees' Exhibit "B" herewith quoted:

"Chicago, August 30, 1949
370-242

Mr. W. S. Morehead:

Please arrange to salvage all 3" Zee side posts and side braces from dismantled 25000 series and other series box cars as we contemplate using 11,904 pieces of 3" Zees approximately 53½" long in contemplated 1950 repair program. When these Zees are cut off car they should be at least 9 feet long so we can cut two finished size pieces from each side post or side brace. They must also be free of rivets and bolts. When program has been assigned to a specific shop we will advise where this material will be used.

/s/ G. J. Lehnerer
S. C. D.

cc—General Master Mechanics) Please arrange to salvage Zees in
Master Mechanics line with above.

cc—Mr. L. H. Schierbecker
Mr. J. M. Reeves
Mr. W. V. McNew
Mr. J. I. Danielwicz"

The record does not show proof of any substantial number of parts being saved for reclamation or reuse.

Insofar as the Second Division's Award 359 is concerned, in our opinion it disposed of a dispute of a similar nature in every respect except the rule involved uses the word "scrapping" instead of "destroying"; otherwise the rules in the two cases have the same substance.

We are quoting portions from Second Division's Docket 340, Award 359, for convenience:

Statement of Claim:

"That Machinist C. J. Dearasaugh, N. Little Rock, Arkansas, be compensated in amount of 40 hours (5 days) at his regular rate of 86c per hour, account duties of laborers extended to include that of machinist classification of work."

Statement of Facts:

"Under date of AUGUST 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, and 30, 1938 at North Little Rock, Ark. 6 laborers were assigned to duties of dismantling locomotive 79, 132 and 2358. Following list of appurtenances were consigned to stock to be used on locomotives of corresponding class:

Engine 2358
Set of main and side rods
Pistons
Crossheads
Steam chest and valves
Brake cylinders
Set of springs
Set of motion works
Set oil burner rigging
Air drums
Set of air brake equipment
Air pumps
Bell

Engines 79 and 132
Steam pipes
Set of valve gear complete
Set main and side rods
Set wheels and boxes
Air pumps
Brake cylinders
Sets brake rigging
Set furnace barriers
Reverse shafts
Front and brake decks
Whistles
Dynamos
Set of throttle rigging
Sets air and steam gauges
Sander valves
Set oil burner rigging
Stacks
Bells
Set of marker lights
Crossheads
Pilot beams
Pair cylinders
Set sand boxes
Engine trucks complete
Engine truck springs
Brake valves
Lubricators
Boilerchecks"

Findings:

"* * * Rule 46 allows the work of 'scrapping' engines to be performed under the direction of a foreman by laborers. The word 'foreman' added to this rule must be given a significant meaning.

By the terms of Rule 46, it must be held that the carrier has the right to do the work in the manner in which it was done in this case

and the employes are held to have bargained away their right to have a machinist perform this work exclusively."

Award:

"Claim denied."

Also quote the controlling rule involved:

"Rule 46. Work of scrapping engines, boilers, tanks and cars or other machinery may be performed by any class of available help under the direction of a Foreman or mechanic."

We contend that the award is in point and is persuasive in the light of the foregoing to determine what the parties had in mind when they negotiated Rule 127 effective April 1, 1935. In our opinion, the referee erred in his conclusions and award sustaining the claim. The claim should have been denied.

/s/ J. A. Anderson

/s/ C. S. Cannon

/s/ M. W. Hassett

/s/ M. E. Somerlott

/s/ A. G. Walther