Award No. 1700
Docket No. 1615
2-Erie-EW-'53

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Electrical Workers)

THE ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier is improperly assigning other than Electricians to operate an overhead electric traveling crane of thirty (30) ton capacity at the Marion Diesel Shop.

2. That accordingly the Carrier be ordered to:

a) Discontinue the use of other than Electricians to operate this crane.

b) Compensate Electricians whose identity will be determined later in accordance with equal distribution of overtime at the applicable overtime rate for each day other than Electricians performed this work retroactive to about December 1, 1951.

EMPLOYES' STATEMENT OF FACTS: At the Diesel shop at Marion, Ohio, the carrier had installed about December 1, 1951, an overhead electric traveling crane of thirty (30) ton capacity. This is affirmed by statements submitted herewith and identified as Exhibits A through E.

The carrier removed plate that designated the overhead electric traveling crane as a crane of thirty (30) ton capacity. The carrier does not deny it is an overhead electric traveling crane of thirty (30) ton capacity, but, contends it will be limited to the lifiting of twenty-five tons. This is confirmed by letter November 13, 1952 from Assistant Vice President G. C. White, a copy of which is submitted herewith and identified as Exhibit F.

The carrier is assigning other than electricians to operate this overhead electric traveling crane of thirty (30) ton capacity.

The agreement effective July 1, 1951, is controlling.

POSITION OF EMPLOYES: It is submitted that the forgoing facts reflect that the carrier installed an overhead electric traveling crane of thirty (30) ton capacity at their Diesel shop at Marion, Ohio. The assignment of other

a claim to secure a new rule without the benefit of negotiation as required by the Railway Labor Act. We reiterate that there have been no negotiations or agreements made on this property governing the class of employes that has exclusive right to pereform this work nor the rate of pay therefor.

The carrier submits that to sustain the employes' position would be, in effect, writing a new rule or giving a meaning to the contract not warranted by a literal reading thereof and clearly not intended by the parties when the agreement was negotiated. The Board has no jurisdiction or authority to take such action. This is in accord with findings of Award 1396, wherein your Board held:

> "The Division concludes that such agreements control the claims made herein and require a denial thereof. To hold otherwise would require the Division to revise the old or make a new agreement which it has no right or authority to do."

It is, therefore, respectfully submitted that the claim is without foundation under the applicable agreement and 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 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.

This claim is based on the contention that carrier is using others than electricians to operate an overhead electric traveling crane at its Marion, Ohio, Diesel Shops. It asks that carrier be required to discontinue this practice and to use only electricians for that purpose.

In view of the contentions made by the parties we think it advisable to set out the parts of Rules 74 and 76 of the parties' agreement that relate thereto.

Rule 74 provides: "Electricians work shall consist of . . . electric crane operators for overhead electric traveling cranes . . . of thirty (30) ton capacity or over . . . "

Rule 76 provides: "Employes regularly assigned to . . . overhead electric crane operators who travel with and operate cranes, except those covered by Rule 74, shall be classified as electrician helpers."

In Award 1358 we held, in a situation to which Rule 76 had application, that: "We find, by reason of the language used in Rule 76, that the operator of an overhead electric crane must travel overhead with the crane while operating it in order to come within the meaning thereof."

Here, as in the situation involved on which Award 1358 is based, the crane is operated from the floor of the shop by means of an automatic push button control suspended from the crane by a drop cable. It is carrier's contention that the requirement contained in Rule 76 must be read into Rule 74, because of the exception contained in Rule 76.

The exception contained in Rule 76 excludes from the provisions of that rule the employes expressly covered by the quoted language of Rule 74. Rule 76 provides carrier must use electrician helpers to operate overhead electric traveling cranes, when the operators travel with and operate them,

but limits its right to do so to cranes of less than thirty tons capacity. When such cranes are of thirty tons capacity, or over, Rule 74 applies. The exception to Rule 76 does make the provisions of Rule 74 applicable to overhead electric traveling crane operators, who travel with and operate such cranes, when such cranes are of thirty, or more ton capacity but it does not, by such exception, limit the quoted language of Rule 74 solely thereto. Rule 74 contains no provision that before operators are required on overhead electric traveling cranes they must travel overhead with the crane while operating it. Nor do we think the exception contained in Rule 76 impliedly causes that requirement to be applied to the operators covered by Rule 74. If the parties desired such a condition to attach to the operators covered by Rule 74 they could and should have placed that requirement therein. It is not within our power to do so as we have no authority to amend the rules the parties have agreed to in their collective bargaining agreements. Our only authority is to interpret and apply such rules as the parties have agreed upon.

The facts are not in dispute. The first overhead electric traveling crane, with pendant operation, was established in carrier's Marion, Ohio Diesel Shop in 1945. This was the crane involved in the dispute covered by Award 1358. With carrier's increase in the use of Diesels, need for a second crane arose at this shop. Carrier had its Engineering Department make a survey to ascertain if this could be done by putting it on the overhead rails being used by the first crane installed. They advised it could but that the use thereof, because of structural support conditions, must necessarily be limited to maximum loads of twenty-five tons. Carrier purchased a crane from the Whiting Corporation designed and constructeed as a thirty-ton crane. Carrier purchased this size crane, instead of one designed and built for lesser tonnage, to enable it to get a longer lift, thirty-five feet in place of thirty-one feet, and as a matter of safety, the 30-ton crane having 12 cables to 10 cables on one of lesser tonnage. Before the crane was installed the carrier took off the manufacturer's 30-ton plate and placed a 25-ton capacity plate thereon. Its operational use was limited by carrier to a maximum of twenty-five tons for the reasons herein already set forth. This second overhead electric traveling crane, with pendant operation, was installed about December 1, 1951.

The question is, what does the following language of Rule 74, "of thirty (30) ton capacity, or over," relate to? Is it the capacity of the crane as designed and built by the manufacturer or is it the capacity to which its use is limited by the carrier for operational purposes? Capacity of a crane is its lifting power, that is, its capacity for that purpose. Generally speaking we think the rules of an agreement are intended to apply to the carrier's operations and the work that employes covered thereby are to do in the performance thereof. In view thereof, the carrier having limited the operational use of this crane to a maximum of twenty-five tons, it falls within the class to which Rule 76 has application. Consequently it is controlled by our holding in Award 1358.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of August, 1953.