Award No. 1719
Docket No. 1637
2-PRR-URRWA-CIO-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

THE UNITED RAILROAD WORKERS OF AMERICA, C.I.O.

THE PENNSYLVANIA RAILROAD COMPANY
Central Region

DISPUTE: CLAIM OF EMPLOYES: (1) That under the controlling agreement the service rights of the Conway Wrecking Crew, Eastern Division, Central Region, were violated when the Carrier used Maintenance of Way employes and others to rerail locomotives, cars and equipment as follows:

We wish to file claim for the following men assigned to wreck train. This claim is for three (3) hours. Car Repairmen at $2.499 and Car Repairmen Helpers at $2.211 punitive rate. On February 11, 1950, Section Crew rerailed engine 6720 on #202 track.

Car Repairman					Car Repairman Helpers				
Mr. M. J. Alberts	3	hrs.	at	$2.499	Mr. R. A. Mensch	3	hrs.	at	$2.221
Mr. M. L. Rimer	"	"	"	"	Mr. J. L. Crispino	"	"	"	"
Mr. J. V. Rager	"	"	"	"	Mr. A. Havranek	"	"	"	"
Mr. V. Idzojtic	"	"	"	"	Mr. P. Fishovitz	"	"	"	"
Mr. F. Deutsch	"	"	"	"	Mr. R. Sassic	"	"	"	"
Mr. F. Vitkovic	"	"	"	"	Mr. A. Grinaldi	"	"	"	"
					Mr. F. Dyminski	"	"	"	"

On March 13, 1950, these men received denials for the following dates

March 3 1950 section men rerailing engine 9866 on #204 track.
March 9, 1950 " " " cars CC&STL and GATX 32394 on 0 track.
March 11, 1950 " " " engine #4991 on #529 track.
March 12, 1950 " " " engine #1438 on #224 track.

Car repairman					Car Repairman Helpers at $2.221		
Mr. M. L. Rimer	"	"	"	"	Mar. 3, 1950	Mar. 9, 11, 12	A. Grinaldi
Mr. F. Vitkovic	"	"	"	"	Mar. 3, 1950	Mar. 9, 11, 12	A. Havranek
Mr. F. W. Deutsch	"	"	"	"	Mar. 3, 1950	Mar. 9, 11, 12	P. Fishovitz
Mr. V. Idzojtic	"	"	"	"	Mar. 3, 1950	Mar. 9, 11, 12	J. L. Crispino
Mr. J. V. Rager	"	"	"	"	Mar. 3, 1950	Mar. 9, 11, 12	R. Sassic
Mr. M. J. Alberts	"	"	"	"	Mar. 3, 1950	Mar. 9, 11, 12	R. A. Mensch
					Mar. 3, 1950	Mar. 11, 12	S. P. Stasik
					Mar. 9, 1950	Mar. 11, 12	E. M. Morgan

out in the "Statement of Facts", Claimant S. P. Stasik was not a member of the wreck crew on the dates in question.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Second Division, is Required to Give Effect to the said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said agreement which constitutes the applicable agreement in this dispute between this carrier and the United Railroad Workers of America, C. I. O., and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the organization in this case would require the Board to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to the applicable agreement. The board has no jurisdiction or authority to take any such action.

CONCLUSION

The carrier has established that the applicable agreement was not violated when the M. of W. department employes were used to assist in the rerailment of engines and cars on the dates involved in the instant dispute, and that under such circumstances the claimants are not entitled to the compensation which they claim.

Therefore, the carrier respectfully submits that your Honorable Board should deny the claim of the organization in this matter.

The carrier demands strict proof by competent evidence of all facts relied upon the claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

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.

The employes contend that Regulation 8-F-1 recognizes that the rerailing of engines or cars is exclusively the work of the Carmen's Craft.

Regulation 8-F-1, Paragraph (a) reads as follows:

> "(a) When a Maintenance of Equipment Department wreck train is used for wrecks or derailments outside of CT Yard, Shop or Enginehouse territory, all members of the crew regularly assigned to the wreck train shall be called to accompany the equipment. For wrecks or derailments inside CT Yard, Shop or Enginehouse territory,

involving the use of part or all of the wreck train, only such members of the wreck crew as are needed shall be called to accompany the equipment. For all other service involving the use of part or all of the wreck train, only such members of the wreck crew as are needed shall be called to accompany the equipment."

The carrier contends that Regulation 8-F-1 does not prohibit the use of others to rerail engines or cars when the wreck train is not used.

The employes do not disagree with the carrier's contention that prior to Regulation 8-F-1, the practice of using other than those of the Carmen's Craft to assist in rerailing of engines or cars was not prohibited by Regulations in the Agreement.

The question then presented to the Division to decide is whether or not Regulation 8-F-1, as now written into the Agreement, changes the intent of Regulations in the previous agreement as to who shall be used in the rerailment of engines or cars when the Maintenance of Equipment wreck train is not used.

Regulation 8-F-1, Paragraph (c) reads as follows:

"(c) The provisions of paragraph (b) of this Regulation 8-F-1 will not apply if the new wreck train is a substitution for a wreck train previously manned by other than Maintenance of Equipment Department employes."

Regulation 8-F-1, Paragraph (b) reads in part as follows:

"(b) When a new wreck train is established at any location, it shall be manned by employes of the Carmen Craft to the extent that qualified employes of that craft are available at the location at the time the wreck train is established. * * *"

There is recognition in Regulation 8-F-1 that rerailing of engines or cars is not exclusively work of the Carmen's Craft.

The employes' claim is not supported by the current Agreement.

AWARD

Claim denied per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1953.