Award No. 1954
Docket No. 1782
2-AT&SF-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—COAST LINES

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement other than Carmen were improperly used to rerail Missouri Pacific Car 42549 on October 8, 1953 at Phoenix Yard, Phoenix, Arizona.

2. That accordingly the Carrier be ordered to additionally compensate Carmen L. S. Williams, M. L. Johnson and A. G. Scranton in the amount of four (4) hours pay at the applicable rate of pay for October 8, 1953.

EMPLOYES' STATEMENT OF FACTS: Carmen L. S. Williams, M. L. Johnson and A. G. Scranton, hereinafter referred to as the claimants, are regularly employed, bulletined and assigned at Phoenix, Arizona, with assigned hours 7:30 A. M. to 12 Noon and 12:30 P. M. to 4:30 P. M., work week Monday through Friday, rest days Saturday and Sunday.

In addition to the claimants, thirteen other carmen are employed in the carrier's car Department at Phoenix, Arizona.

On October 8, 1953, a derailment occurred within the Phoenix Yard limit. The sight of the derailment was within 100 yards of the car repair shop, at which time at least nine (9) carmen were on duty. The derailment involved M. P. Car 42549 side-swiping AT&SF Cars 181850 and 182067; UOCX 10355 and Southern Car 31100. The derailment occurred about 8:45 A. M. Shortly after the derailment, Carmen McClure, Cuba and Houser were sent from the car shop to the west switch track No. 6, the scene of the derailment, for the purpose of rerailing MP Car 42549. The carrier officers decided that before the car could be rerailed they would need a derrick, so they hired a mobile crane from the H&R Transfer Company for the purpose of rerailing the car. This H&R Transfer Company mobile crane carried a crew of three (3) consisting of an operator and two cable and hitch employes. This three-man crew of this wrecking derrick is not employed in railroad

The carrier submits that the use of the H&R Transfer Company crane in this case was no different than the use of a foreign railroad's wrecking outfit and crews, which practice has been in effect on this carrier for many years without protest or claims from the employes. Also, in its Awards 1027, 1065 and 1068, the Second Division has upheld the right of a carrier to use wrecking outfits and crews of another carrier to clear wrecks on the home road.

In conclusion, the carrier wishes to call the Board's attention to Second Division Award 975, which deals with a case where the carmen's organization filed a claim for pay in behalf of (8) members of a wrecking crew under somewhat similar circumstances, i.e., in that case, other than members of the wrecking crew, with the aid of a locomotive crane, jacks, cables, blocks, etc., rerailed three cars on line. In denying the organization's claim, Referee I. L. Sharfman said:

> "* * * The evidence of record does not, in the circumstances of this proceeding, disclose any violation of the controlling agreement."

The type of claim presented and the nature of the work involved in the instant dispute is quite similar to that covered by Second Division Award 975 and it was clear to the Board at that time, that carmen do not have a monopoly, by agreement or otherwise, to all wrecking service.

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.

On October 8, 1953, a privately-owned crane, together with a two or three man crew, was hired by carrier to aid in rerailing one of five cars derailed within yard limits. While three assigned carmen handled the rerailing of four cars, both trucks of the fifth car were off the track and buried in the dirt. The carrier alleged that to rerail the subject car, even though emptied, would have been hazardous and would have resulted in further damage to the car and tracks. The nearest wrecking crane owned by carrier was twelve hours away.

The organization relies upon Rule 108 (d) reading, in part:

> "For wrecks or derailments within yard limits, a sufficient number of carmen (where employed) will be called to perform the work. * * *."

and Rule 29 (a) providing, in part:

> "(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft. * * *."

It contends that there is nothing in the Agreement to authorize the use of employes outside the railroad industry to augment carmen in wrecking or rerailing service. Further, it states that a number of additional carmen were available for service at the time.

If this was simply the case of bringing in outside man-power to augment the carmen force when other carmen were available, the claim would be sustainable. See Award 1936 involving the identical rule on this property. See also Awards 1678 and 1760. Further, this Division, with and without referee assistance, has ruled upon past occasions that when mechanical lifting devices and their operators are used to assist carmen in the performance of

their work it constitutes the doing of work within the scope of the agreement between the parties. See Awards 244 and 1363. In recent Award 1829, after examining the rules of the agreement there involved and finding that the operation of the crane was not the exclusive work of any craft, we stated:

> "It is the character of the work performed by the crane that ordinarily determines the craft from which its operator will be drawn. This is on the theory that as the work performed belongs to a certain craft, the methods employed to perform it, including the machinery used, does not have the effect of removing it from the agreement with the craft who holds rights to the work."

While these awards lay down a general rule such rule should not be extended beyond the factual situations there involved, that of permanent and continuous working assignments.

The record is deficient in two important respects. First, it is not shown to what extent the derailing had fouled the tracks and what tracks were involved except to state that "the carrier's business required the use of quickly available facilities in order to restore operations at the earliest possible moment." The organization, on the other hand, omitted to show with what dispatch, with what number of carmen, and with what degree of safety to the men and property, brawn, experience and the ordinary carmen's tools could have effected the rerailing. The carrier in their initial submission, however, based their decision to use a crane upon those factors.

There is nothing before us to indicate that the two or three men accompanying the crane did any more than operate and service that equipment and we so assume for the purposes of this case.

Granted there is nothing in the rules to recognize the use of privately-owned equipment with its operating staff in circumstances such as this, it is doubtful that such a rule could be drafted with any degree of success to cover exercise of managerial discretion in the wide variety of circumstances which are bound to arise in this connection.

While insufficient facts are furnished to say with finality that this constitutes an emergency, such as the fouling of main tracks involved in Award 1559, it is widely different from the situation confronting the carrier in Award 1090, for example, where a derailed log car could be shoved aside to await the spring house cleaning of the right of way. No contention has been made that the carrier could or should have awaited the arrival of the wrecking train, stationed at a point 219 miles distant.

Considering the location involved, the limited use of the equipment and its crew, and from the facts appearing of record, we find that the carrier did not violate the spirit and intent of Rules 29 (a) and 108 (d) by bringing in a mechanical device to meet an isolated, difficult and somewhat emergent situation. The rules cited are essentially aimed at controlling the use of personnel and, as we have found, the work of the contractor's employes was incidental to the operation of the machine. It was not claimed that available carmen were skilled in the crane's operation and should have been used in operating it.

Under the facts presented in this docket, the claims asserted are without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1955.