

Award No. 2405

Docket No. 2252

2-B&O-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

BALTIMORE AND OHIO RAILROAD

DISPUTE: CLAIM OF EMPLOYES: (1) That the Carrier violated the provisions of the controlling agreement when on May 6, 1954 the New York Central wrecking outfit and crew were used at Cincinnati, Ohio to reraill nine (9) cars on track leased by the Baltimore and Ohio Railroad Company from the New York Central Railroad Company.

(2) That accordingly, the Carrier be ordered to compensate each member of the Cincinnati, Ohio (Storrs) wrecking crew for four hours and twenty minutes at the pro rata rate of pay.

EMPLOYES' STATEMENT OF FACTS: On May 6, 1954, nine freight cars were derailed on a track leased and maintained by the Baltimore and Ohio Railroad. The Baltimore and Ohio wreck master was dispatched to ascertain the degree of wreck with the idea of taking his wreck crew and rerailling the equipment. Before he was able to return to the shops and take his wreck crew, he was informed that the New York Central wreck crew was to perform this work, and did perform the work. The Baltimore and Ohio Storrs Shop wreck crew, which is located one-half (½) mile from the scene of this derailment, was available and willing to perform this wrecking service.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective September 1, 1926, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is the position of the employes that the current Shop Crafts Rules 141 and 142, reading:

"Rule 141

**(Rule Established by Labor Board
Effective December 1, 1921)**

Wrecking Crews.

Regularly assigned wrecking crews will be composed of carmen, where sufficient men are available, and will be paid for such service

New York Central crews. The B&O wrecking crew had no rights to this service; as this carrier was told in Award 5246 (Third Division):

“But the Scope Rule of a Collective Bargaining Agreement covers only the work thereunder which is or may be undertaken by the Carrier in connection with its operation of its railroad. That is, the Scope Rule of an agreement on one property does not cover like work on another property not under the control of the specific Carrier.”

In view of the above the carrier submits that the claim made here at both parts 1 and 2 is without merit. The carrier respectfully requests that this Board so hold and that the claim be denied in its entirety.

CARRIER'S SPECIAL STATEMENT ON THE NEW TIME LIMIT RULE: The carrier submits there may be some substantial question as to whether or not this case has been timely filed by the committee within the meaning of the new time limit rule. Article V, Section 2, reads in full as follows:

“With respect to all claims or grievances which arose or arise out of occurrences prior to the effective date of this rule, and which have not been filed by that date, such claims or grievances must be filed in writing within 60 days after the effective date of this rule in the manner provided for in paragraph (a) of Section 1 hereof, and shall be handled in accordance with the requirements of said paragraphs (a), (b) and (c) of Section 1 hereof. With respect to claims or grievances filed prior to the effective date of this rule the claims or grievances must be ruled on or appealed, as the case may be, within 60 days after the effective date of this rule and if not thereafter handled pursuant to paragraphs (b) and (c) of Section 1 of this rule the claims or grievances shall be barred or allowed as presented, as the case may be, except that in the case of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule, a period of 12 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment as provided in paragraph (c) of Section 1 hereof before the claim or grievance is barred.”

The final decision in the instant case was rendered November 23, 1954. The declaration of intent filed in this case is dated December 28, 1955. The mandatory stipulation of the time limit rule is the period of twelve months, i.e., twelve months from January 1, 1955. Yet, there is no evidence that the committee actually made an “appeal” as of that date (by submitting a full and complete statement of facts). A declaration of intention to file certainly does not operate to extend the time limit. For this reason the carrier suggests that in this particular case the mandatory provisions of Article V, Section 2, may not have been met. If such proves to be the case, then this case is patently barred.

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 claim involves wrecking service performed by a New York Central crew on a track owned by that carrier. The claim alleges that such track is

leased to this carrier but that is denied and the carrier asserts that it has only a trackage right agreement with New York Central.

It is shown that this carrier has assumed responsibility for the maintenance of the track but there is no evidence that it has any operating control nor any exclusive right to the use of same. Under such circumstances the claim cannot be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March, 1957.