Award No. 3265

Docket No. 3080

2-B&O-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Roscoe G. Hornbeck when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1—That the Carrier violated the provisions of the controlling agreement when on June 7, 1957, management at East St. Louis, Illinois locomotive shop, used other than carmen to rerail Diesel unit 4622.

2—That accordingly, the Carrier be ordered to compensate each of the following four carmen, four hours at pro rata rate of pay, H. F. Gaines, J. W. Robb, M. O'Brien and F. C. Lowman.

EMPLOYES' STATEMENT OF FACTS: On June 7, 1957, about 7:20 A.M. Diesel No. 4622 was being moved out of locomotive shop by the hostler. In this movement one pair of trucks were derailed. Management instructed and supervised the rerailing of this truck with six (6) machinists, one (1) electrician, two (2) apprentices and one (1) helper. There was no emergency and there were carmen available to perform this work if they had been instructed to do so.

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 Rule 142 reading

"Rule 142
(Rule established by Labor Board
Effective December 1, 1921)

On the above mentioned date it was agreed that no General Chairman, or other representative, or member of any organization signatory to this agreement, would individually request Management to take work away from one craft and give it to another. Also, Management agreed to comply with the provisions of this jurisdictional dispute agreement by not taking work from one craft and assigning it to another.

Would appreciate it if you would issue instructions to all concerned that it is the request of System Federation No. 30 that the provisions contained in the jurisdictional dispute agreement be complied within its entirety.

Very truly yours,

/s/ A. H. Stearns
/t/ A. H. Stearns
President."

AHS/B

This Division has ruled in cases of this kind that an appeal to this Board is premature:

In Award 2322 of this Division (System Federation No. 121 v. T. & P.) (Referee Carter) the same kind of "jurisdictional dispute agreement" was at issue.

In that award it was held in part as follows: "***the appeal to this Board is premature. The appeal must be dismissed for that reason."

CARRIER'S SUMMARY: The carrier submits that employes of the car department claiming here, all carmen, have no special, sole or exclusive rights to this work. On the basis of the rules agreement and established past practices, this work does now, and has always, belonged to employes coming under the scope of the operating, as well as the non-operating agreements, there being no exclusive reservation of this work to employes coming under the carmen's agreement. The carrier has cited numerous awards of this Division confirming this general proposition. On this basis, therefore, the claims found here should and ought to be denied.

On the other hand, the effect of the claim made here by the carmen's committee is to take away work performed by employes coming under the Shop Crafts' Agreement, covered by other than the Carmen's Special Rules, and to capture to the carmen's agreement (Special Rules) work that has never before been its exclusive reservation. This being the case, in the alternative, the carrier submits this claim should properly be dismissed before this Board.

The carrier respectfully requests, therefore, that this claim be denied in its entirety or, in the alternative, as stated hereinabove, be dismissed.

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.

Parties to said dispute were given due notice of hearing thereon.

The fact pattern here is substantially the same as in Award No. 2343, Second Division, findings in which we follow. See also findings in Award 3257, this Division.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3265

The majority states in the findings that "The fact pattern here is substantially the same as in Award No. 2343. Second Division, findings in which we follow." The fact pattern may be substantially the same but the agreement is not and the governing agreement is what is supposed to be followed.

The majority also refers to findings in Award 3257, this Division. We wish to reiterate what we said in our dissent to that award. The majority there attempted to justify a denial award by holding that the phrase "when wrecking crews are called" in probability, is by implication written into the second sentence of Rule 142. The agreement discloses that Rule 142 was established by the United States Railroad Labor Board effective December 1, 1921. The cover on the agreement shows that the agreement was reprinted in May 1940 and November 1952 without any changes having been made in original rule 142 and the rule is therefore in full force and effect as originally established. The language of the rule is plain as to its meaning and is not subject to implication. It should be enforced as made. This Board has no authority to impose its ideas in a matter that is plainly covered in the rule by clear and concise language.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner