Award No. 4190
Docket No. 3795
2-CMStP&P-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement it was improper to use employes other than regularly assigned wrecking crew together with Crane X116 to rerail cars at Rapid City, South Dakota on June 27, 1959.

2. That accordingly, the Carrier be ordered to compensate carmen (wrecking crew) C. R. Merryman, J. A. Shumansky, J. J. Raley and L. Bolton each for the amount of time they would have earned in accordance with the controlling agreement if they had been used.

EMPLOYES' STATEMENT OF FACTS: At Sioux City, Iowa, the carrier maintains a wrecking outfit and a regularly assigned wrecking crew composed of Carmen C. R. Merryman, J. A. Shumansky, J. J. Raley and L. Bolton, hereinafter referred to as the claimants, whose regular assigned hours were from 7 A. M. to 12 Noon — 1 P. M. to 4 P. M. Monday through Friday, with Saturday and Sunday as rest days.

At approximately 6 P. M. on June 26, 1959, SAL 26886, CMStP&P 2717 and CMStP&P 01893 were derailed at Rapid City, South Dakota. The carrier dispatched its B&B Department Crane No. X116 and operator from Interior, South Dakota together with three section laborers to the scene of the accident. The crane and operator arrived at Cedar Rapids at approximately 12 o'clock Midnight and together with the three section laborers immediately began rerailing the cars. The rerailing was completed at approximately 6 A. M., June 27, 1959.

This dispute has been handled in accordance with the current agreement up to and including the highest officer designated by the carrier with the result that he has declined to make any adjustment.

'When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit.'

is a conditional word, indicating that the parties contemplated that in some circumstances wrecking crews would not be called to the scene of wrecks and derailments."

Award No. 2208, reading in part:

"With reference to that part of the claim that carmen only can rerail locomotives and cars outside of yard limits, we hold against the claimants. Where wrecking crews are called for wrecks or rerailments outside of yard limits, carmen regularly assigned to a wrecker crew are entitled to the work under Rule 67 (c). But in the present case, the wrecker outfit was not called. In fact, claimants were not even assigned to the wrecker crew. When a wrecker outfit is not called, the rerailing of locomotives and cars is not the exclusive work of carmen. Awards 2049, 1763, 1757, 1482, 1322. The claim for rerailing the cars is not valid."

This claim is, in fact, a request for an interpretation of the rule that would require the carrier to call and use carmen for all wrecks and derailments outside of yard limits contrary to the clear and unambiguous language of the rule, which is not subject to interpretations and would have the effect of changing the rule without formal notice, conference and negotiation as provided in Section 6 of the Amended Railway Labor Act. The various divisions of the Board have consistently recognized and held they are without authority to amend or change the rules, which this alleged claim is designed to do and would do, if sustained.

The carrier submits that the instant claim is not properly before your Board and for that reason should be dismissed and further submits that the instant claim is not supported by schedule rule or agreement or by awards of this division pertaining to this same subject and the carrier respectfully requests that the claim be denied in its entirety.

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 waived right of appearance at hearing thereon.

On June 26, 1959, at about 9:00 P.M., three cars in Train No. 166 were derailed outside of yard limits at Rapid City, South Dakota. To rerail said cars, the Carrier assigned a maintenance of way crane operator with a maintenance of way crane from Interior, South Dakota, which is about 72 miles from Rapid City, as well as three other maintenance of way employes who were on hand at Rapid City. The work time amounted to approximately 6 hours for each employe.

The five Claimants, L. Bolton, R. P. Bolton, C. R. Merryman, J. J. Raley, and J. A. Shumansky, who belong to the carmen's craft, comprise the regularly assigned wrecking crew at Sioux City, Iowa, a distance of about 422 miles from Rapid City where the derailment occurred. They filed the instant grievance in which they claimed that the work of rerailing the three cars in question should have been assigned to them. They requested compensation equal to the amount which they would have earned in accordance with the applicable labor agreement if they had been used. The Carrier denied the grievance.

1. In support of their grievance, the Claimants mainly rely on Sections (a) and (c) of Rule 88 of the labor agreement which read, as far as pertinent, as follows:

> "(a) Wrecking crew, **when needed,** shall be composed of regularly assigned qualified carmen when available, and will be paid as per Rule 10 . . .
>
> "(c) **When** wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit . . ." (Emphasis ours.)

In our Award 2792 also involving this Carrier and the carmen's Organization we held that the words "when needed" appearing in Section (a) and the word "when" appearing in Section (c) indicate that the determination of when the wrecking crew is needed is left to management. In Docket 1253 involving different parties we were called upon to construe a provision substantially similar to Section (c). We held in our Award 1322 that the word "when" is a conditional word, indicating that the parties contemplated that in some circumstances wrecking crews would not be called to the scene of wrecks and derailments. A rule identical with Section (c) was the subject of interpretation in Docket 1959. In our Award 2208, we held that, where wrecking crews are called for wrecks or rerailments outside of yard limits, carmen regularly assigned to a wrecker crew are entitled to the work. However, we denied the claim or carmen in that case on the ground that the wrecker outfit was not called and that, when a wrecker outfit is not called, the rerailing of locomotives and cars is not the exclusive work of carmen. The Claimants so strenuously insist that our prior Awards were ill advised that we have carefully reexamined the legal questions involved in order to clarify them with finality.

2. It is firmly recognized in the law of labor relations that a labor agreement must be construed as a whole. Single words, sentences or sections cannot be isolated from the context in which they appear and be interpreted literally and independently, with disregard for the manifest intent and understanding of the parties as evidenced by the **entire** agreement. Hence, the meaning of each sentence or section must be determined by reading **all** pertinent sentences or sections together and coordinating them in order to accomplish their evident aim and intent. See: Award 4130 of Second Division.

In applying the above principles to this case, we have reached the following conclusions:

A thorough examination of Sections (a) and (c) of Rule 88 has convinced us that the two Sections complement each other, and thus must be coordinated in an effort to assign a logical meaning to both of them consonant with the obvious intent of the parties. Section (a) explicitly and unmistakably

provides that, when a wrecking crew is needed, it shall be composed of regularly assigned, qualified, and available carmen who will be paid from the time ordered to leave their home station until their return for all time worked as well as for all traveling and waiting time in accordance with Rule 10 of the labor agreement. Moreover, the words "when needed" clearly and unambiguously indicate that a wrecking crew must not be called in all circumstances but only when it is necessary to use it. In other words, Section (a) reflects an understanding of the parties that situations might arise where it would not be necessary to call a wrecking crew for the purpose of rerailing cars or locomotives.

Once the need for a wrecking crew has been determined and the crew is called for wrecks or derailments outside of yard limits, then Section (c) requires that a sufficient number of the regularly assigned crew will accompany the outfit. Any other construction of the two Sections would deprive one or the other of its vitality. It is generally presumed, however, that the parties do not write into a formal labor agreement words or sentences intended to have no effect. See: Arbitration Award in re John Deere Tractor Co., 5 LA 631, 632 (1946).

3. A further question requiring decision is who shall determine whether a wrecking crew is "needed" within the contemplation of Section (a)? In the absence of a contractual limitation, as is here the case, the determination of such need initially rests with the Carrier, subject, however, to challenge through the contractual grievance procedure (Rule 34 of the labor agreement) by an employe who believes that such determination was violative of the labor agreement. See: Award 3629 of the Second Division. Since the determination of the need for a wrecking crew within the purview of Section (a) involves managerial discretion and judgment, we are of the opinion that the Carrier's decision can successfully be challenged before this Board only on the ground that it was arbitrary, capricious, discriminatory or an abuse of managerial discretion. Otherwise, we would substitute our judgment for the reasonable managerial discretion of the Carrier and thereby write a limitation into the labor agreement which it actually does not contain. Section 3, First (i) of the Railway Labor Act confers no authority upon us to do this.

4. The evidence before us does not demonstrate any abuse of discretion in the Carrier's determination that the Sioux City wrecking crew was not needed. The record discloses that the derailment of the three cars in question was of a minor nature and that the rerailing only required about 6 hours. Under these circumstances it cannot be said that the Carrier abused its managerial discretion in violation of Section (a) of Rule 88 when it called a maintenance of way crane operator from Interior, a distance of about 72 miles, and three other maintenance of way employes, who were on hand at Rapid City, instead of the Claimants who were located at Sioux City, a distance of about 422 miles. On the contrary, the Carrier's determination that the Claimants were not needed was a proper exercise of its managerial discretion. Accordingly, we hold that, on the basis of the specific facts presented by this case, the Carrier did not violate Sections (a) or (c) of Rule 88.

5. Since we have denied the instant claim on its merits, it becomes unnecessary to rule on the Carrier's procedural objection as well as on the question as to whether the Claimant R. P. Bolton, who was not listed in the Organization's submission brief, could subsequently be included therein, and we express no opinion on the validity thereof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May, 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4190

The majority in referring to Award 2792 ignores the fact that in that dispute this same carrier took the position that for work identical to that performed in the present instance employes within the scope of the carmen's craft were used. We do not agree that "when" is a conditional word. Had Rule 88 been meant to imply condition the word "if" would have been used, that is "if" needed or "if" wrecking crews are called. However even on the majority's unacceptable view of the grammatical construction of this rule the claim should have been sustained as the equipment used (a maintenance of way crane) and the employes assigned (a maintenance of way crane operator, as well as three other maintenance of way employes) is evidence that a wrecking crew, including a wrecking derrick operator, was needed.

Under the circumstances of this case it is evident that the use of employes outside the scope of the agreement negotiated between the parties to the dispute was in violation of said agreement.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink