Award No. 4393
Docket No. 4250
2-MP-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement particularly Rules 119 and 120 were violated when the Missouri Pacific Railroad Company used other than carmen to rerail cars ART 29417 and ART 51360 at the Stahl Packing Shed, Raymondville, Texas, on April 22, 1961.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carmen H. L. Ahrendt, M. A. Isdale, E. F. Roe and F. M. Kreigel, members of the regularly assigned wrecking crew, in the amount of four (4) hours each at the time and one-half rate for all time consumed in traveling to the derailment; four (4) hours each at the time and one-half rate rerailing cars ART 29417 and ART 51360 and four (4) hours each at the time and one-half rate for time consumed returning to home point of Kingsville, Texas on April 22, 1961.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains a wrecker derrick and regularly assigned wrecking crew at Kingsville, Texas. Carmen H. L. Ahrendt, M. A. Isdale, E. F. Roe and E. M Kreigel, hereinafter referred to as the claimants, are regularly assigned members of this wrecking crew.

On April 22, 1961 at 2:45 A. M. a derailment occurred at the Stahl packing shed, Raymondville, Texas, a point approximately 125 miles South of Kingsville, Texas. Four cars were involved in the derailment — two of which were side-swiped (ART 53643 and ART 33161) and two cars (ART 29417 and ART 51360) were derailed.

Instead of the carrier calling the wrecking crew from Kingsville, Texas to perform this rerailing, they violated the agreement when they called an oil field contractor, Mr. Lee Walker, from Edinburg, Texas, to perform this work of clearing the derailment at Raymondville, Texas. Mr. Walker was assisted by two carmen from Harlingen, Texas, however, this work is

1933 which amounted to a job freeze is believed to have been one of the principal reasons for allowing that law to expire; and a similar provision was rejected by the Congress when it enacted the Transportation Act of 1940."

The Board went on to say

"We agree, too, with the Presidential Railroad Commission that a job freeze is a 'moratorium on progress'."

The report of the Presidential Railroad Commission released February 28, 1962, devoted one section of the report to "The Importance of Change." At another point (page 132), the Commission said

"The goal of our public policy is take advantage of technological advances and not to permit obstruction of their application."

Your Board should approach this dispute from the same viewpoint. The use of the truck is simply an example of management taking advantage of a new type of machine, a form of technological advance. Your Board should not obstruct the application of technological advances unless the parties have agreed the use of such advances is prohibited. Rules 119 and 120 do not prohibit management from taking advantage of this technological advance. The rules should be read so as to give the words their usual and normal meaning. The carrier is obligated to have a sufficient number of the regularly assigned crew accompany the outfit only when the wrecking crew is called. In this case, the wrecking crew was not called. The carrier was not obligated and the rule was not violated.

Claimants are regularly assigned to positions as carmen at Kingsville and worked their regular assignments. The claimants suffered no loss of pay. The agreement does not compel the carrier to call these employes out on their rest days. We believe it is evident that the claimants are not really seeking the work but are seeking the money — pay at time and one-half and in this case the punitive rate for work not performed. Rules 119 and 120 do not support the claim. The claim must be declined.

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.

In the early morning hours of April 22, 1961 a derailment occurred on a stub end siding near Raymondville, Texas. Behind the derailed cars (two) of which had been side swiped and two derailed) were three refrigerated cars loaded with vegetables. Carrier's nearest point employing carmen was Harlingen, 22 miles South; its nearest Wrecking outfit was at Kingsville, 72 miles North. The Carrier call two carmen from Harlingen and hired an oil field winch truck from Edinburg, 37 miles Southwest of Raymondville. With the winch

truck following their advice and with the use of rerailing frogs the Harlingen Carmen completed the rerailing in four hours.

The Organization alleges that the Carrier violated Rules 119 and 120 of the applicable agreement when it used other than carmen to rerail cars; it asks that some of the Kingsville wrecking crew be paid as though they had performed the rerailing involved.

The employes point to Award No. 3629 as a recent case which is analogous to the instant facts. While we agree that the substantial facts are similar it must be noted that the language of the corresponding rules conveys a much different meaning. The rules involved in Award No. 3629 provide as in (1) and (2) below:

> (1) "Rule 127 — All or part of regularly assigned wrecking crew, as may be required, **will be called for wrecks or derailments.** (Emphasis ours)
>
> (2) Derailments — Other Employes.
>
> This does not preclude using other employes to pick up or clear minor derailments **when wrecking derrick is not needed."** (Emphasis ours)

Additionally, the agreement provided that all members of the wrecking crew were to be regularly assigned carmen.

The provisions of the applicable rules in the instant case are as follows:

> **"Rule 119.**
>
> (a) Regularly assigned wrecking crews will be composed of carmen and helpers, where sufficient men are available, and will be paid for such service under Rule 7, except that the proper officer may select wrecking engineers from any class of mechanics in service giving preference to mechanics employed as carmen. Meals and lodging will be provided by the Company while crews are on duty in wrecking service.
>
> (b) When needed men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.
>
> Rule 120.
>
> 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. For wrecks or derailments within yard limits, sufficient carmen and helpers will be called to perform the work, if available."

A careful review of Rule 127 from the Agreement between the parties involved in Award No. 3629, and which is set out as (1) and (2) above, shows that the Carrier and the employes had agreed to use either the wrecking crew or other employes of the Carrier for all wrecks or derailments; and further it had been agreed that they would share the responsibility of determining **"when the wrecking derrick is not needed"** (emphasis ours). We believe that

Rules 119 and 120 of the agreement involved in the instant case convey a different meaning than that which is being placed on them by the employes. We find no language in these rules which require the Carrier to send the wrecking crew to all wrecks or derailments, nor is there any language which prevents the Carrier from determining, unilaterally, when the wrecking crews are to be called.

Because the employes have not pointed out other facts or agreement rules than those which are mentioned herein to support their position, we must find that they have not proven that the Carrier violated the agreement, in which case and in view of the decisions of numerous prior Awards we must deny their claims.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1964.

DISSENT OF LABOR MEMBERS TO AWARD 4393

The statement of the majority that it finds no language in Rules 119 and 120 of the agreement rules "which require the Carrier to send the wrecking crew to all wrecks or derailments" implies an exception in the rules and there is no exception. The majority in further stating that "nor is there any language which prevents the Carrier from determining, unilaterally, when the wrecking crews are to be called" overlook the fact that the rules of the agreement are JOINTLY determined through collective bargaining BY THE PARTIES TO SAID AGREEMENT and the carrier has no right to determine unilaterally any matter covered by the rules of the agreement.

Instead of calling the nearest wrecking outfit, which was located at Kingsville, the carrier called two carmen from Harlingen and hired an oil field winch truck from Edinburg. Under Rule 119 of the governing agreement the regularly assigned wrecking crew maintained at Kingsville should have been called.

The majority by its erroneous findings not only upholds the carrier in violating the rules of the agreement but discloses a complete lack of understanding of the manner in which the terms of the agreement are made.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink