

Award No. 4686
Docket No. 4479
2-NYC-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

THE NEW YORK CENTRAL RAILROAD
(EASTERN DISTRICT)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement when they contracted the services of a Mobile Crane and Operator from Taglia Inc., to perform wrecking service at the derailment of 29 cars in Train No. CB-2 at Warners, N. Y. on December 12, 1960.

2. That accordingly, the Carrier be ordered to compensate the DeWitt Steam Crane Engineer, Carman F. Milback at the applicable rate of pay for all time that other than a Carman operated the Mobile Crane used for wrecking service as follows:

Date and hours contracted mobile crane operator were used for wrecking service:

Date	Regular hours	Premium time
December 14, 1960	8 hours	6 hours
December 15, 1960	8 hours	6 hours
December 16, 1960	8 hours	6 hours
December 19, 1960	8 hours	6 hours
December 20, 1960	8 hours	6 hours
December 21, 1960	8 hours	5 hours
December 26, 1960	8 hours	12 hours
February 21, 1961	8 hours	4 hours
February 22, 1961	8 hours	4 hours
February 23, 1961	8 hours	4 hours
February 24, 1961	8 hours	4 hours
February 28, 1961	8 hours	4 hours
March 1, 1961	8 hours	
March 2, 1961	8 hours	
March 3, 1961	8 hours	

Date	Regular hours	Premium time
March 6, 1961	8 hours	
March 7, 1961	8 hours	
March 8, 1961	8 hours	
March 9, 1961	8 hours	
March 10, 1961	8 hours	
March 13, 1961	8 hours	
March 14, 1961	8 hours	
March 15, 1961	8 hours	
Total hours	184	67

3. That the Carrier be ordered to cease and desist from assigning or contracting wrecking service to other than the Carman's craft.

EMPLOYEES' STATEMENT OF FACTS: Steam Crane Engineer (Carman) F. Milback hereinafter referred to as the claimant is regularly employed by the New York Central Railroad, hereinafter referred to as the carrier with assigned hours from 7:00 A. M., to 3:00 P. M., Monday through Friday, with Saturday and Sunday as rest days. Claimant is the regularly assigned derrick engineer of the wrecking crew located at DeWitt Yards, East Syracuse, N. Y. On December 12, 1960, a wreck occurred at Warners, N. Y., a distance of about twenty miles from DeWitt Yards, East Syracuse, N. Y.; Warners, N. Y., which is within the area serviced by the wrecking crew located at DeWitt Yards, East Syracuse, N. Y.

On December 12, 1960, at 1:30 P. M., the DeWitt Steam Crane at East Syracuse, N. Y., and the entire crew including claimant, were called for the wreck at Warners, N. Y. The carrier secured the services of a Mobile Crane and operator owned by an outside concern, namely Tartaglia Inc. Contractors, Syracuse, N. Y., for wrecking service at Warners, N. Y. The main line was cleared at 3:00 P. M., on December 13, 1960, and the Steam Crane and the entire crew was released and ordered back to their home station at DeWitt, N. Y. On December 14, 1960, and subsequent dates shown on Exhibit (A) attached hereto, with the exception of the steam crane engineer, the entire steam crane crew were ordered back to the wreck at Warners, N. Y. The crew was taken there by trucks and ordered to work with contracted Mobile Crane and operator until the entire wreck was cleared up.

This dispute has been handled with all officers of the carrier designated to handle such disputes including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement effective July 16, 1946 with revisions to July 1, 1951 as subsequently amended is controlling.

POSITION OF EMPLOYEES: The carrier violated the controlling agreement particularly carmen's Special Rules No. 157, paragraph (a) and (c) and No. 158 which are as follows:

"RULE 157 — WRECKING CREWS.

(a) Regular assigned wrecking crews, including engineers, will be composed of carmen, where sufficient men are available, and will be paid for such service under Rule 10. Meals and lodging will be provided by the company while crews are on duty in wrecking service.

regularly assigned crew will accompany the outfit. This is a conditional rule and does not require that wrecking crews will be called. If the situation can be met by other means there is no obligation by rule to even call the wrecking crew. This provision specifically recognizes that road wrecking work may be performed by other than carmen and simply states that a sufficient number of the regularly assigned crew will accompany the outfit if it is called. In the case at hand, carrier's steam cranes had completed the work that they could perform under the conditions present.

Use of the mobile off-track crane of Tartaglia Company was not a violation of Rule 158, all provisions of that rule were complied with as three wrecking outfits were used at the derailment and released when no longer needed.

Use of the DeWitt Steam Crane to load the damaged equipment on cars after this equipment had been placed alongside the main line, would have adversely affected the operation of trains. It would have required taking out of service an additional track to the one track on which the cars were spotted for loading the damaged equipment; it would have tied up operations on the remaining track, since the on-track steam crane would be operating therefrom.

The traffic at this point is very heavy. All trains to and from cities served by this carrier in Eastern section of this Nation and to and from the numerous cities on this carrier's system west of Syracuse operate over this trackage. Consequently many trains would have been delayed greatly if the one track had not remained open.

Carrier would be remiss if it did not direct the board's attention to the fact that the claim as presented in this case requests payment at punitive rate for some of time claimed although no service was in fact performed by the claimant as a result of which claim is made.

This division of the adjustment board has ruled in the past that such time claims are not proper.

In conclusion, the carrier asserts the instant claim is wholly without merit and urges your board to deny it 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 were given due notice of hearing thereon.

The Claimant, Floyd Milback, is a regularly assigned wrecking crew derrick engineer on the 7:00 A.M. to 3:00 P.M. shift—Monday through Friday—at the Carrier's DeWitt Yards, East Syracuse, New York.

On December 12, 1960, at 1:20 P.M., an eastbound train was wrecked at Warners, New York, which is about 15 miles from Carrier's DeWitt Yards. The wreck caused major damage to many of the 30 derailed cars and blocked the main lines.

At 1:30 P. M. on December 12, 1960, the DeWitt Steam Crane and the entire wrecking crew — including the Claimant — were called out. The wrecking crews from Corning, New York, and from Buffalo, New York, respectively 115 miles and 137 miles from Warners, New York, were also called out.

The Carrier also hired from Tartaglia, Inc., of Syracuse, New York, an off-track mobile crane and an experienced operator.

By December 13, 1960, the main line tracks were cleared and service was restored but at reduced speeds. The DeWitt Steam Crane and the entire wrecking crew were released and ordered back to their home station.

On December 14, 1960, the entire steam crane wrecking crew — save for the steam crane engineer — were sent back to the wreck and ordered to work with the Mobile Crane and its operator.

The Labor Agreement effective July 16, 1946, with revisions to July 1, 1951, and as subsequently amended is controlling.

The Organization contends that the Carrier violated Rule 157, paragraphs (a) and (c), and Rule 158 — which, in pertinent part, reads as follows:

“RULE 157 — WRECKING CREWS

“Regular assigned wrecking crew, including engineers, will be composed of carmen, where sufficient men are available * * *.

The management will be agreeable to filling the positions of Steam Crane Engineers from the ranks of Carmen * * *.”

“RULE 158

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 * * *.”

The Carrier, on the other hand, contends that a mobile off-track crane was needed, and that the Carrier had to accept the services of the man that the Tartaglia Company assigned to operate the crane.

We have analytically studied and objectively evaluated all the Awards given to us by the contesting Parties. We gave special attention to Second Division Award No. 4581, because the Organization contends that that Award “upholds the Organization and is persuasive to our position”.

We believe that Award No. 4581 is a sound Award. However, we also recognize that the factual situation in that Award is readily distinguishable from the facts in the dispute before us.

In Award No. 4581 the Board ruled, in part, that:

“* * * is the use of Higgins’ personnel to man the crane and the rigging. It is clear that the riggers were performing work at the scene of the derailment which comes within the Carmen’s ‘Classification of Work’ Rule. There is no showing that Carrier, in hiring the Higgins outfit was obligated to take Higgins personnel to act as a ground crew, and we express no opinion of our disposition of that issue had it been presented.

Concerning the two operators of the Higgins crane, the Claimants have not shown that they, as Carmen, were qualified to operate this type of equipment, and therefore we are unable to say that these two positions should have been filled by Claimants."

In the dispute before us there is no showing that the Carrier had a mobile off-track crane such as was reportedly needed in this wreck. Therefore, the Carrier properly exercised its managerial judgment in procuring such a crane from Tartaglia, Inc. Furthermore, there is no showing in the record that the Claimant was able to operate the mobile off-track crane. There is, however, a contention that the Tartaglia Company would not have rented its crane to the Carrier unless the Carrier agreed to accept that Company's experienced mobile crane operator.

There is also evidence in the record that the services of Carmen from the DeWitt Wrecking Crew were used to the fullest extent possible, because 4 wrecking crew Carmen were used to assist the mobile crane operator in his work.

Accordingly, we cannot hold that the Carrier violated the controlling Labor Agreement, and we must, therefore, deny this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.