Award No. 4828
Docket No. 4657
2-B&OCT-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)

THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1.(a)—That the Baltimore and Ohio Chicago Terminal Railroad Company violated the rules of the current agreement when it used four sectionmen and an assistant train master to perform wrecking service on January 24, 1963, at East Chicago, Indiana.

(b)—That the Baltimore and Ohio Chicago Terminal Railroad Company violated Article V(a) of the August 21, 1954 Agreement when its Master Mechanic failed to satisfy the requirements of the above said rule in his declination of the claim on May 6, 1963.

2.—That the Baltimore and Ohio Chicago Terminal Railroad Company be ordered to compensate Carmen C. Cash, B. Martin, R. L. Griffin and D. Leshko eight (8) hours each at the time and one-half rate account this violation.

EMPLOYES' STATEMENT OF FACTS: The Baltimore and Ohio Chicago Terminal Railroad Company hereinafter referred to as the carrier, maintains a substantial work force of carmen at its Barr Yard-East Chicago facility, including Carmen C. Cash, B. Martin, R. L. Griffin and D. Leshko, hereinafter referred to as the claimants. (Barr Yard is located in a suburb (south) of Chicago; East Chicago is located in the state of Indiana, a distance of about 12 miles apart, and together forms one seniority district.) The carrier maintains a wrecking outfit and a regular assigned wrecking crew consisting of carmen at its Barr Yard point, **and a wrecking car containing blocks, jacks, cables, etc., and other equipment necessary for effecting rerailments, at its East Chicago point.**

This wrecking car is maintained by the car department to the extent that necessary equipment is maintained for derailments around the vicinity of East Chicago.

CARRIER'S SUMMARY: The carrier submits that employes of the car department, claimants here, all carmen, have no special, sole, or exclusive rights to this work. On the basis of the rules agreement and established past practice, 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 special rules of the shop crafts' 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. The effect of the claim here made by the carmen's agreement work that has never before been its exclusive reservation.

Therefore, the carrier respectfully requests that this 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 were given due notice of hearing thereon.

When this five car derailment occurred the regularly assigned wrecking crew was busy with another derailment and was not available, but was called next day to rerail the last two cars. On the day of the derailment three derailed cars blocking the switching lead were rerailed by the train crew, assisted by one or more sectionmen supervised by the Assistant Train Master. Whether a car inspector assisted, as alleged by the Carrier, is immaterial, since the Claim concerns the propriety of rerailing work by trainmen and others who were not carmen.

The contention is that this work belongs exclusively to carmen (not only to wrecking crews), under Rule 78, which provides that regularly assigned wrecking crews (except the engineers) shall be composed of carmen "where sufficient of them are available," and Rule 76, which classifies carmen's work as including "all other work generally recognized as carmen's work." The proviso "where sufficient men (carmen) are available," shows that not even membership on regularly assigned wrecking crews is the exclusive prerogative of carmen. If, despite the proviso, the rules are considered ambiguous in that respect, practice may be examined to ascertain their meaning.

The record shows that traditionally on this and other carriers under similar rules it has long been the practice of train crews and others to rerail equipment when wrecking outfits are not required. One evidence of this is a Memorandum of Understanding, dated April 2, 1954, between this carrier, the Baltimore and Ohio Railroad Company, and the Brotherhood of Railroad Trainmen, providing an arbitrary for handling rerailing frogs and blocking for equipment derailed by them without their fault, and a higher arbitrary with regard to equipment not derailed by them. That Memorandum has no bearing upon the Agreement applicable here, except to show that it has not been generally recognized as making rerailing the exclusive prerogative of carmen.

A number of awards of this Division have denied claims under these and similar rules on various railroads including the Baltimore and Ohio Railroad

Company, and we do not conclude that they are wrong. See Awards Nos. 3257, 3265 and 4337.

There is a further claim that the denial of the original claim was insufficient to comply with the requirement of Article V, Section (a) of the August 21, 1954 Agreement that notice be given in writing "of the reasons for such disallowance."

The final disallowance was as follows:

> "I have investigated these claims, and have found that the crews did rerail the cars that could be pulled on without the aid of a crane, in order to make the switching lead usable, and I cannot find anywhere in the working agreement with the B.R.C. of A. where same has been violated, therefore, I am declining payment of the claims, account same not having any merit."

The employes have not submitted any argument or precedents concerning the claimed insufficiency of the denial, and not until their Rebuttal did they specify their objections, which were these: that in it the Master Mechanic failed to answer several questions which the local chairman had asked him by letter some five weeks previously, and "did not give any reason why he denied our claim or go into detail as to why he denied it."

In the absence of any requirement in the rule that questions be answered, the facts generally discussed, or the reasons explained in detail, the denial seems a sufficient compliance with the rule.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.

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