Award No. 5005
Docket No. 4929
2-SPS&-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY (System Lines)

DISPUTE: CLAIM OF EMPLOYES:

1 – That the Carrier violated the controlling Agreement when it used employes of the Northern Pacific Railroad at Snake River, Washington on January 23, 1964, to rerail cars SP&S 13217 box car and UTLX 27908 tank car.

2 – That accordingly the Carrier be ordered to pay to carmen, O. Brekke, W. D. Tredway, E. J. Dell, and K. E. Manley, twelve hours each at straight time rate — the time they would have earned had the Carrier not violated the Agreement.

EMPLOYES' STATEMENT OF FACTS: The Spokane, Portland & Seattle Railway Company, hereinafter referred to as the carrier, maintains at Vancouver, Washington, a wrecking outfit and regular assigned wrecking crew composed of carmen of which carmen O. Brekke, W. D. Tredway, E. J. Dell, and K. E. Manley hereinafter referred to as the claimants, are regularly assigned members thereof.

On January 23, 1964, the carrier called the Northern Pacific Railway Company, Pasco, Washington wrecking outfit, accompanied by four members of the wrecking crew to the scene of derailment, Snake River, Washington to rerail SP&S 13217 box car and UTLX 27908 tank car. The claimants are regularly employed at Vancouver Shop, O. Brekke, E. J. Dell, and K. E. Manley with an assigned work week, Monday through Friday 7:30 A. M. to 4:00 P. M. Rest days Saturday and Sunday. W. D. Tredway assigned work week, Tuesday through Saturday 7:30 A. M. to 4:00 P. M. Sunday and Monday rest days.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the car-

of using wrecking outfits and crews of one carrier to pick up derailments on lines of the other carrier on a reciprocal basis was not changed or abrogated when the working agreement was negotiated.

2. It has been held by the Adjustment Board that the reciprocal use of wrecking outfits and crews by two or more carriers does not constitute a violation of the wrecking service rule appearing in the working agreements on the respective properties.

3. Wrecking service is not included within the carmen's classification of work rule in the controlling agreement and, obviously, it has never been considered as exclusively belonging to carmen employed by respondent.

4. In any event, none of the claimants were available at the time and place the disputed work was required to be performed. Each of them worked full time on his regular assignment on that date at Vancouver, Washington, 256 miles distant.

Respondent, therefore, submits that this claim must 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.

This dispute centers on Carrier's use of a Northern Pacific Railway Company wrecking crew to rerail cars outside of yard limits at Snake River, Washington, on January 23, 1964. Petitioner maintains that the work belongs to Carrier's Crews but, Carrier contends that it is under no obligation to use them for rerailments outside yard limits.

Claimants are carmen regularly assigned to a wrecking crew at Vancouver, Washington, the eastern-most point where a wrecking crew or outfit is maintained by Carrier. The first Carrier terminal east of Vancouver is Pasco, Washington, which is 25 miles west of Snake River and 221 miles east of Vancouver.

Carrier contends that it has been its regular practice, both before and after contractual relations had begun with the Organization in July 1940, to use Northern Pacific wrecking crews at Pasco to rerail cars in that eastern area of its property. While Carrier emphasizes long-standing contracts with Northern Pacific for reciprocal use of wrecking crews, the applicable collective bargaining agreement, effective November 16, 1957, contains no reference to those commitments and they certainly are not controlling here. Neither problems of distance nor contracts with other employers permit Carrier to remove work from a collective bargaining agreement if that work is embraced by its terms. Cf Award 4400.

Accordingly, it is to the agreement of November 16, 1957, particularly Rule 67 thereof, that we must turn to determine the rights of the parties in the present case. Rule 67 reads as follows:

> "Rule 67. Regularly assigned wrecking crews, including engineers, will be composed of carmen, where sufficient carmen are available, and will be paid for such service under Rule 12. Except when working in yards, meals and lodging will be provided by the company while crews are on duty in wrecking service.
>
> 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 the yard limits, sufficient carmen will be used to perform the work."

In our opinion, the language quoted above is ambiguous with respect to the point in issue.

The awards that have considered Rule 67 or substantially similar provisions have not been consistent and furnish no firm guideposts in Petitioner's favor. Award 4193 does lend weight to the present claim but such Awards as 2049, 2792 and 4190 hold to the contrary and support Carrier's theory that Rule 67 does not require it to call its wrecking crews for outside yard limit derailments. Other awards called to our attention by Petitioner are plainly distinguishable since, unlike the present case, Awards 1327, 4600 and 4838 concern work within yard limits, while Awards 857, 2185, 3190 and 4964 relate to the composition of wrecking crews that were actually called and Award 4193 concerns a situation where the work of "clearing wrecks" was specifically included in the agreement involved in that case as a work classification of mechanics.

In this setting, it is appropriate to consider past practice. Carrier has presented some evidence that it has used Northern Pacific wrecking crews in the eastern area of its property for many years. Petitioner challenges the timeliness of that evidence, but that point is academic. The burden of establishing all essential elements of the claim rests on Petitioner and here it has submitted no facts to show how Rule 67 was interpreted in actual practice on the property.

Since no clear basis is perceived in the agreement or in past practice for finding that Carrier is contractually committed to use its own wrecking crews to rerail cars outside yard limits in the Snake River area, the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 9th day of December, 1966.

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