Award No. 5197
Docket No. 4886
2-N&W-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement, wrecking service such as was performed at Itman Mines empty supply track, on June 3, 1963, is the work of a regularly assigned Wreck Crew.

2. That on June 3, 1963, the Carrier did not comply with the controlling Agreement, and particularly Rules 9 (d), 110, 112, 113, 114, and supplement No. 33, when Maintenance of Way Employes were utilized to pick up derailed Car Norfolk and Western No. 41840 and load same upon Norfolk and Western Car No. 97899.

3. That the Carrier be ordered to additionally compensate the regularly assigned wrecking crew, namely G. B. DeHart, Wreck Derrick Engineer, W. L. Hatcher, Jr., Carman, and C. D. Toney, Helper Carman at Elmore, West Virginia, two (2) hours and forty (40) minutes for a call at the rate of time and one-half for June 3, 1965.

EMPLOYES' STATEMENT OF FACTS: At Elmore, West Virginia the Carrier maintains a Wreck Derrick and a regularly assigned Wrecking Crew, composed of Carmen G. B. DeHart, W. L. Hatcher, Jr. and C. D. Toney, Carman Helper, hereinafter referred to as claimants.

At Itman Mines, located a short distance from Elmore Shops, there was a derailment, and an earthslide, sometime prior to June 3, 1963, near the end of the empty supply track or tracks, above the loading tipple. The Elmore Wreck Derrick and crew was called and sent to the site of derailment and rerailed the car or cars that were accessible to the wreck derrick. Norfolk and Western Car No. 41840 was obstructed by debris, and the wreck derrick and crew returned to Elmore, leaving Car No. 41840, at site of derailment and earthslide. Subsequent thereto, Maintenance of Way equipment was used

Emphasis is ours to the words "when" and "are called." "When" is a conditional word, a definition of "when," among other things, is "akin to if." It contemplate that in some circumstances, wrecking crews would not be used; if the wrecker is used, the regular wreck crew will be called. The words "are called" are plain to the extent of "when" a wrecking crew is called for a wreck outside yard limits as to complement of crew. Here, they were not called and no necessity therefore to load this one car. No repairs were made by the Maintenance of Way employes to this car, disconnecting of the trucks having been made by carmen. Later, carmen were used to block car for transit.

The operation as described above and as implied by this claim, is a narrow interpretation of the rules of the agreement, is unrealistic, and in our opinion, involves a strained construction of the rules. The Railway Company is obligated, by law, to use sound judgment in the conduct of its operations and has all functions not given away by agreement. The work in question in this case, and which the Organization is objecting to, is the picking up and loading of one hopper car while in the midst of a cleaning up operation. In relation to the work at hand for the Maintenance of Way Crew, the removal of this one hopper car so that it could continue its operation was minor.

Attention is directed to the fact that the Carrier had the Elmore wrecker at the scene and while removing other cars, made an effort to remove N&W car No. 41840, but efforts failed due to the fact the cables broke. Efforts were abandoned after breaking cables on two occasions.

It is, therefore, obvious that the use of the Maintenance of Way crane to load the car in a gondola rather than move it aside while the crane was removing the slate slide was clearly necessarily in the interest of efficiency and economy, and proper under such circumstances.

The rule does not include any penalty when wrecking crews are not called, as it was obviously understood and agreed the rule only applied when wrecking crews are called and that they would not be called in all instances.

CONCLUSION

The Carrier affirmatively states that the substance of all matter referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties hereto.

The contentions of the Employes should be dismissed and the claim denied.

Oral hearing is not requested, unless requested by the Employes.

(Exhibits not reproduced.)

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.

The claim is that picking up a derailed car and loading it consists of wrecking service and should have been performed by the regularly assigned Elmore Wrecking Crew instead of the maintenance of way men.

Derailed cars at Itmann Mines was close to the Elmore shops; a derailment and earth slide had taken place there prior to June 3, 1963.

Itmann mines is about four miles from Elmore, West Virginia.

Cars were to be removed, but on May 6, 1963, the Elmore wreck car tried to move car No. 41840, but failed as the car was 85% buried under debris. Efforts were abandoned after the cable broke twice.

The agreement states that when wrecking crews are called for wrecks or derailments outside of yard limits, the regular assigned crew will accompany the outfit.

The maintenance of way men that were present loaded the car in the gondola instead of moving the car aside. This was necessary and proper under the circumstances. The work was not wrecking service and did not have to be done only by the wrecking crew. It was properly done by the maintenance of way men.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1967.

LABOR MEMBERS' DISSENT TO AWARD NO. 5196

The second paragraph of the Employes' Statement of Facts reads as follows:

> "When the Carrier elected to work the Coal Hump overtime, instead of putting on a third shift, it was agreed upon locally, when the Hump worked in excess of two and one-half (2½) hours the pit inspectors would be called from the Carmen's Overtime Board. In Carrier's Master Mechanic L. S. Fidler's letter of May 4, 1964, addressed to Local Chairman G. C. Watkins he states, 'There was no such understanding or agreement between the Local Chairman and the General Foreman at Russell Terminal.' However, he did admit it had been the past practice to call men from the Carmen's Overtime Board when the Hump worked in excess of two and one-half (2½) hours."

On reading the Employes' Statement of Facts quoted above it will be noted that it was the carrier who denied that there was any such an agreement. In the findings of the majority quoted below they say it was the Organization that denied there was any such practice; that there was such an understanding.

"According to past practice, in calling men from the Carmen's Overtime Board when the hump worked in excess of 2½ hours, which practice the Organization at first denied but later stated that there was such an understanding * * *."

The seventh paragraph of the Carrier's Position reads as follows:

"In denying this claim * * *, the initial officer denied that any such agreement had been made with the Organization as to the manner in which Carman would be worked on an overtime basis on the local hump and set forth the practice which had been followed * * *."

It will be noted from the quote above from the Carrier's Position that the initial officer denied there was any such agreement that had been made with the Organization. It will be noted from the quote below from the findings of the majority they say the Organization denied that there was such an agreement.

"The Organization denied that there was such an agreement but it admitted there had been a past practice to call men from the Carmen's Overtime Board when the hump worked in excess of two and one-half hours * * *."

The twelfth paragraph of the Carrier's Statement of Facts reads as follows:

"The humping operation resumed and continued without further interruption. However, the trouble with unit 5547 had caused a delay of more than an hour, resulting in the inspector remaining on duty for 2 hours and 55 minutes beyond the close of second shift * * *."

It will be noted in the quote above from the Carrier's Statement of Facts they admitted the inspector worked 2 hours and 55 minutes beyond the close of second shift. It will be noted in the quote below from the findings of the majority they say the inspector stayed on until 11:00 P. M., his quitting time and left; then state that the carrier did not violate the agreement by not assigning overtime work which was not needed.

"The reason the carman was not worked the 2½ hours was due to the fact that at midnight trouble developed on the locomotive unit. Mechanics were called in to see if they could repair the unit; but they could not do so. Therefore, the inspector only stayed on until 11:00 P. M. his quitting time and left. Accordingly the Carrier did not violate the agreement by not assigning overtime work which was needed."

The foregoing shows the discrepancies indulged in by the majority in arriving at their conclusions in Award 5196. We, the Labor Members, dissent.

The same confused and extravagant findings are used to deny Awards 5193, 5194, 5197, 5198, 5199 and 5200 and we therefore likewise dissent to these awards.

Oren Wertz
D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger

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