

Award No. 5621

Docket No. 5410

2-SOU-CM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement other than Carmen were improperly used to augment the regular assigned wrecking crew force at Copper Ridge, Tennessee, on July 29 and 30, 1965.

2. That accordingly, the Carrier be ordered to compensate Carmen C. G. Mayfield and D. T. Johnson, Knoxville, Tennessee sixteen (16) hours at time and one-half rate of pay for July 29, 1965 and nine (9) hours at time and one-half rate of pay for July 30, 1965. Also Carman C. E. Perkins, Knoxville, Tennessee, twenty-four (24) hours at the rate of time and one-half for July 29, 1965 and nine (9) hours at the rate of time and one-half for July 30, 1965.

EMPLOYEES' STATEMENT OF FACTS: On July 29 and 30, 1965 the Knoxville, Tennessee derrick and crew was assigned to pick up a derailment at Copper Ridge, Tennessee.

The wrecking outfit, together with the regular assigned crew, upon arrival at Copper Ridge, Tennessee, immediately began rerailling the cars involved in the derailment. Upon completion of this assignment, the wrecking outfit departed and arrived at their home station on July 30, 1965.

At the time of arrival at Copper Ridge, Tennessee, the wrecking crew was immediately augmented with three (3) track Laborers, Trainmaster Helton, Assistant Superintendent Greenwood and Section Foreman Hayworth. Trainmaster Helton, Assistant Superintendent Greenwood, Section Foreman Hayworth and three track Laborers performed wrecking service consisting of rerailling cars GATX 71682 and WADX 3367 by the use of cables, hooks, rerailers, blocks, hammers and engine to pull cars onto the rails. This is confirmed by affidavits from two of the wrecking crew members submitted herewith and identified as Exhibits A and B.

Letters dated June 6 and September 18, 1936 addressed to former Assistant Vice President Mackay by former General Chairman Dyke, copy of Mr. Mackay's letter of September 25, 1936 addressed to Mr. Dyke and copy of Mr. Dugan's letter of February 15, 1943 addressed to Mr. Dyke referred to in the last paragraph of the above quoted letter are attached hereto as Carrier's Exhibits L, M, N and O, respectively. The General Chairman accepted Carrier's decision in the above referred to claim, clearly conceding the point at issue.

Many other cases could be cited where other than carmen have been used throughout the years to rerail or to assist in rerailing freight cars but Carrier will not burden the record. The evidence is conclusive that employes of the carmen's class or craft have conceded the point at issue. Carrier's interpretation of the controlling agreement and its position before the Board is fully supported by the plain unambiguous language of the agreement as well as the established practice of long standing on the property.

CONCLUSION

Carrier has shown conclusively in the record before the board that:

(a) The controlling agreement was not violated as alleged and does not support the claim presented. The agreement clearly does not contain any language which confers upon carmen exclusive rights to the performance of wrecking service.

(b) The established practice under the controlling agreement throughout the years fully supports Carrier's position and its interpretation of the controlling agreement.

(c) The here named claimants were not members of the regularly assigned wrecking crew. They were regularly assigned as carmen at Knoxville, Tennessee and had no contract right to be called or used for wrecks or derailments outside of yard limits. Claimants were clearly not adversely affected and claim presented in their behalf is wholly without basis.

In view of the plain, unambiguous language of the agreement and the evidence presented, the Board has no alternative but to make a denial award.

Evidence submitted in support of Carrier's position has been made known to employe representatives.

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.

Rules 149, 152 and 153, relied upon by petitioner do not convey monopolistic rights to the carmen's craft to perform wrecking service such as the rerailing of cars to the exclusion of all others. In fact, the language of these rules, particularly Rule 153, make it clear that carmen do not possess such rights to service under all circumstances.

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 January, 1969.