Docket No. 5608

Award No. 5768

2-CM&STP&P-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO
(Carmen)

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R. R. CO.

DISPUTE: CLAIM OF EMPLOYES:

1. That the current Agreement was violated when Carrier used other than regularly assigned wrecking derrick operator to perform wrecking service at Heath, Montana on April 11, 1966.

2. That accordingly the Carrier be ordered to compensate Mr. Robert Wood in the amount of eight (8) hours at time and one-half rate, of derrick operator's rate.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Milwaukee, St. Paul and Pacific Railroad Co., hereinafter referred to as the carrier, maintains a wrecking outfit and a regularly assigned wrecking crew at Harlowton, Montana.

At 7:00 A.M. of April 11, 1966, three (3) members of the regularly assigned wrecking crew from Harlowton, Montana were dispatched by truck to Heath, Montana with instructions to perform wrecking service on Milwaukee road hopper car, number 96890, which was upside down.

At the scene these three (3) members of the regularly assigned wrecking crew were joined by crane X-106 and an operator who was not a member of the regularly assigned crew, in fact was from another department.

These four (4) men and crane then performed the necessary wrecking service to right Milwaukee 96890 and then returned to Harlowton, Montana, arriving at 4:00 P.M.

This dispute has been handled with all carrier officers designated to handle such matters, all of whom have declined to adjust it.

The agreement, effective September 1, 1949, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that the carrier, in the instant dispute, violated the provisions of the current agreement when they

same subject and the carrier respectfully requests that the 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 waived right of appearance at hearing thereon.

Carrier had one system hopper which was tipped on its side at Heath, Montana. Its position was not interfering with train movement over the rails. The righting of the hopper, therefore, was not an emergency.

Carrier on April 11, 1966, assigned three Carmen at Harlowton, 73 miles from Heath, who were members of the Harlowton wrecking crew, to travel by truck from that point to Heath to perform service in rerailing the hopper. The wrecking outfit — wrecking derrick and outfit cars — remained at Harlowton.

Carrier used a crane operated by an employe covered by the Maintenance of Way agreement to assist in the rerailing.

Petitioner voices no objection to the use of the crane. Its contention is that, while engaged in the rerailing, the work of operating the crane was exclusively, by agreement, reserved to Carmen in Rule 88 (a) and (c of Carmen's Agreement which read:

> "(a) **Wrecking crews, including wrecking derrick operators and firemen, when needed, shall be composed of regularly assigned qualified carmen when available,** and will be paid as per Rule 10. Wrecking derrick operator shall receive the operator's rate while acting in such capacity." (Emphasis supplied.)
>
> "* * *.
>
> "(c) **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.** . . (Emphasis supplied.)

It has been established by the case law of this Board that wrecking service is not exclusively reserved to Carmen absent a contractual commitment. See, for example, Award Nos. 1322, 2208, 5306.

We have twice interpreted and applied Rule 88 (a) and (c). In Award No. 2792 we held:

> "The employes now claim that Rule 88 which states in substance
>
> > '(a) Wrecking crews, * * * when needed, shall be composed of * * * carmen * * *.' and
> >
> > '(c) When wrecking crews are called * * * a sufficient number of * * * crew will accompany the outfit.'
>
> 'in effect entitles the wreck crew 'to perform all wrecking service outside of yard limits.'

We do not agree with this contention because the language of the rule, as emphasized above, leaves to the management the determination of when the wrecking crew is needed."

In Award No. 4190 we found:

"A thorough examination of Section (a) and (c) of Rule 88 has convinced us that the two Sections complement each other, and thus must be coordinated in an effort to assign a logical meaning to both of them consonant with the obvious intent of the parties. Section (a) explicitly and unmistakably provides that, when a wrecking crew is needed, it shall be composed of regularly assigned, qualified, and available carmen who will be paid from the time ordered to leave their home station until their return for all time worked as well as for all traveling and waiting time in accordance with Rule 10 of the labor agreement. Moreover, the words 'when needed' clearly and unambiguously indicate that a wrecking crew must not be called in all circumstances but only when it is necessary to use it. In other words, Section (a) reflects an understanding of the parties that situations might arise where it would not be necessary to call a wrecking crew for the purpose of rerailing cars of locomotives.

Once the need for a wrecking crew has been determined and the crew is called for wrecks or derailments outside of yard limits, then Section (c) requires that a sufficient number of the regularly assigned crew will accompany the outfit. Any other construction of the two Sections would deprive one or the other of its vitality. It is generally presumed, however, that the parties do not write into a formal labor agreement words or sentences intended to have no effect. See: Arbitration Award in re John Deere Tractor Co., 5 LA 631, 632 (1946).

3. A further question requiring decision is who shall determine whether a wrecking crew is "needed" within the contemplation of Section (a)? In the absence of a contractual limitation, as is here the case, the determination of such need initially rest with the Carrier, subject, however, to challenge through the contractual grievance procedure (Rule 34 of the labor agreement) by an employe who believes that such determination was violative of the labor agreement. See: Award 3629 of the Second Division. Since the determination of the need for a wrecking crew within the purview of Section (a) involves managerial discretion and judgment, we are of the opinion that the Carrier's decision can successfully be challenged before this Board only on the ground that it was arbitrary, capricious, discriminatory or an abuse of managerial discretion. Otherwise, we would substitute our judgment for the reasonable managerial discretion of the Carrier and thereby write a limitation into the labor agreement which it actually does not contain. Section 3, First (i) of the Railway Labor Act confers no authority upon us to do this."

The theory argued by Petitioner in the instant case is that when the Carrier has made a determination that a wrecking crew is "needed" all the work involved then becomes exclusively reserved to Carmen and Carrier is obligated to assign a sufficient number of Carmen to the wrecking crew to perform all the work. We find no support of the premise in Rule 88(a) and (c). The only qualification of Carrier's inherent management prerogative to

determine the number of employes assigned to a wrecking crew under any circumstances is:

"a sufficient number of the . . . crew will accompany the outfit."

In this case no "outfit" accompanied the wrecking crew.

Rule 88(a) and (c) does not mandate that a wrecking crew shall consist of sufficient Carmen to perform all the work involved as a result of a wreck — the interpretation which Petitioner seeks. It does not expressly reserve to a wrecking crew, which the Carrier finds "needed," the exclusive right to all the work in the wrecking service. The words "when needed" connote "to the extent needed."

We find no contractual bar to the operation of the crane by a Maintenance of Way employe in light of the facts of record; provisions of Carmen's Agreement; and, the established principle that wrecking service is not reserved, exclusively, to Carmen in the absence of expressed contractual obligation. We will deny the Claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 10th day of September, 1969.

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