Award No. 5812
Docket No. 5693
2-PC(NYNH&H)-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES' DEPARTMENT, AFL — CIO
(Carmen)

PENN CENTRAL TRANSPORTATION COMPANY
(New York, New Haven & Hartford Railroad Co.)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the provisions of the controlling agreement when on August 31, 1966, NYC 864425 was derailed when train N.S. — 2 was pulling into Hartford Yard. The trainmaster decided to use four (4) Carmen, the CC 8 Crane operated by an Engine House Laborer, a lift tractor operated by an employe of the maintenance of the Way Department and a crane car operated by a Carman from the Repair Track.

2. That accordingly the Carrier be ordered to compensate each of the following Carmen, K. Kapral and P. Zigman for six (6) hours at punitive rates.

EMPLOYES' STATEMENT OF FACTS: K. Kapral and P. Zigman, hereinafter referred to as claimants are employes of the New York, New Haven and Hartford Railroad, hereinafter, referred to as the carrier, as carmen at Hartford Car Yard. Claimant K. Kapral's tour of duty is 3:00 P.M. to 11:00 P.M. Tuesday to Saturday with rest days Sunday and Monday. Claimant P. Zigman's tour of duty is 11:00 P.M. to 7:00 A.M. rest days Tuesday and Wednesday. These men were available for call.

On Wednesday morning August 31, 1966 Train N.S. 2 was pulling into Hartford Yard and derailed Coal Hopper N.Y.C. 864425. It was the opinion of the general foreman at Hartford that the derailment needed the New Haven wreck train to clear up the derailment.

This was overruled by the trainmaster who decided to use the CC 8 crane operated by an engine house laborer, the lift tractor operated by a maintenance of way employe and a crane car operated by a carmen from the repair track, with the assistance of four (4) carmen.

And in Award 2208 (Carter):

> "With reference to that part of the claim that carmen only can rerail locomotives and cars outside of yard limits, we hold against the claimants. Where wrecking crews are called for wrecks or rerailments outside of yard limits, carmen regularly assigned to a wrecker crew are entitled to the work under Rule 67 (c). But in the present case, the wrecker outfit was not called. In fact, claimants were not even assigned to the wrecker crew. When a wrecker outfit is not called, the rerailing of locomotives and cars is not the exclusive work of carmen. Awards 2049, 1763, 1757, 1482, 1322. The claim for rerailing the cars is not valid."

Award No. 4186 (McDonald) sustained a claim of the regularly assigned derrick engineer of a wreck train at Baden, Missouri, because two members of the regularly assigned wreck crew at that point were sent by highway truck to Hartsburg, Missouri, and worked with a crane and bulldozer, which the carrier hired from an outside concern, in the rerailing of a car at Hartsburg. The Board's reasoning there was that when two regularly assigned wreck crew members were called out, it then became the obligation of the carrier to have also called the derrick engineer of the wreck train.

The converse of this is, of course, that if the two regularly assigned wreck crew carmen had not been called, then there would have been no basis to the claim of the derrick engineer.

In the instant claim, there were no regularly assigned wreck crew members called and, therefore, the rerailing work did not accrue exclusively to the carmen's craft.

A claim very similar to the instant claim was made on this property when on November 14, 1960, Train SN-1 derailed a car in the Hartford Yard. No further progression of this claim was made by the employes. It will be noted that this claim was in favor of four carmen at Hartford, including Mr. Kapral, because the rerailing of this car was done by track forces and an electrician under the direction of the trainmaster.

It is respectfully submitted that in the light of Board Awards and the prior history on this property, the instant claim should be denied.

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.

On August 31, 1966 an empty coal car was derailed as Train MS-2 entered the yard at Hartford, Connecticut. Carrier assigned four Carmen, then on duty, to rerail the car with a Car Department crane car. They were assisted by an Enginehouse Laborer who operated a CC-8 Crane and a Maintenance of Way employe who operated a lift truck to support one side of the car.

Peititioner alleges that Claimants K. Kapral and P. Zigman, both Hartford Car Inspectors, should have been called in from the overtime list (they were not on duty at the time). It argues, in substance as follows:

1. Use of the Maintenance of Way employe and Laborer violated the second sentence of Rule 111 which provides that:

   "When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

   Since two of the six men used on August 31 were not Carmen, it is evident that sufficient Carmen to perform the work were not called.

2. Claimants were capable and experienced in the work involved. Moreover, since they were included on a list of employes available to handle wrecks and derailments, and thus were obligated to have telephones, Carrier's action deprived them of an opportunity to earn over-time, which is necessary to help defray telephone expenses.

3. Carrier erred in deciding not to utilize a regular wreck train since as performed, the rerailing operation was unsafe.

Carrier contends, on the other hand, that:

1. Carmen do not have exclusive right to rerailing work unless a wreck train has been called.

2. Rule 111 comes into play only when wreck trains are utilized. Since none was called here (in fact, none was staioned at or near Hartford), Carrier was not obligated to call Claimants. Moreover, even if a wreck train had been used, Claimants would not have been called since they were not members of a regular wrecking crew.

* * *

The basic disagreement here concerns the second sentence of Rule 111. This Board has dealt with identical disputes in several awards, including Awards 3257 (1959), 3265 (1959) and 3859 (1961). These decisions have not been over-ruled and are applicable here. Carrier was not obligated to use a wrecking crew and the claim here is not on behalf of regular members of such a crew. Whether the operation was consequently unsafe, therefore, is not within the scope of this inquiry. Rule 111 does not provide Carmen exclusive jurisdiction over derailment work. Several Carmen were used, as a matter of fact, and there is no persuasive evidence that Claimants were qualified to operate the crane and lift truck, the work to which Petitioner contends they should have been assigned. Their assignment would have provided more Carmen than were "sufficient" to accomplish the task. The "list" on which Claimants' names appeared simply contained the names of men who had made themselves available for overtime calls in connection with derailment work. It did not constitute a contractual guarantee that they would be assigned all such work.

Under all these circumstances the claim will 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 20th day of November, 1969.

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