



Award No. 5858

Docket No. 5746

2-D&RGW-CM- '70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A.F. of L.-C.I.O.
(Carmen)**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That other than carmen were used to operate a D8 caterpillar tractor with side boom to lift and rerail cars at Salt Lake City, Utah, on March 2, 1967.
2. That Maintenance of Way men operated this D8 caterpillar tractor with side boom in place of the regularly assigned wrecker engineer.
3. That the regularly assigned wrecker engineer, Carman Grant W. Young, be paid eleven and one-half (11 1/2) hours at straight-time rate of pay, the same as the other carmen received that were working on this derailment.
4. That the Carrier used this side boom D8 caterpillar tractor in place of the regularly assigned wrecker derrick at Salt Lake City, Utah, and that they cease and desist from using other than carmen to operate this machine when it is used to repair, rerail or for wrecks in general.

EMPLOYEES' STATEMENT OF FACTS: The Denver & Rio Grande Western Railroad Company, hereinafter referred to as the carrier, maintains at Salt Lake City, Utah, a regularly assigned wrecking outfit composed of derrick car no. 027, along with related tool and bunk cars. Carrier also maintains at Salt Lake City, Utah a regularly assigned wrecking crew, including wrecking derrick engineer, composed of carmen. Sometime prior to March 2, 1967, carrier placed wrecking Derrick No. 027 in its Burnham Shops for repairs and brought in a S.B. 1-D8 caterpillar tractor with side boom from Minturn, Colorado to take the place of the wrecking derrick and protect this point in case of derailments and wrecks.

The S. B. 1-D8 caterpillar tractor with side boom is carried on a specially built and equipped flat car, Rio Grande ax 3140, and carries wrecking tools and material. The specially built flat car has storage lockers on the B end and also belly compartments for the storage of tools and material.

the wrecker and when not called for a wreck other crafts may perform wrecker service as such service is not exclusively the work of carmen.

Rule 41 (d) and (e) also do not establish the work in question as exclusively carmen's work.

The employees next cite the carmen's classification of work rule 92. The work rule lists in great detail each class of work claimed by carmen. On the subject here it claims the work of "train car repairers, wrecking derrick engineers." However, the rule does not elaborate on the duties of a wrecking derrick engineer. It certainly does not provide they will work on bulldozers. It should be noted that the carmen's work classification rule 92 does not list bulldozer operators among its many jobs there listed. Again, the rule cited by the employees does not support the claim.

The employees cited Rule 96 (a) in support of the claim. It concerns the sending out of a carman and helper when necessary to "... repair cars on the road . . ." This rule does not support the claim that wrecker service is exclusively carmen's work. No repair work is involved and the derailment was in yard limits and not on the road so 96 (a) is inapplicable.

The employees in throwing in this rule 96 (a) dealing only with the repairing of cars on the road affirm carrier's position that the employees now claim repairing of cars by other than carmen took place. This position clearly was not presented by the employees in the original and early stages of the handling of the claim on the property.

The work of rerailing cars in yards or on roads is not exclusively carmen's work or claimant's. Carrier at its discretion may or may not call out the wrecker derrick or outfit for a derailment. Here none was called. See Second Division awards 2049, 2343 and 3257. The caterpillar tractor involved clearly is not a wrecker derrick. It is just what the employees call it—"A caterpillar tractor with side boom." Carrier has denied it is a wrecker derrick or outfit. On this point see Second Division awards 2339, 3254, 5306. The work of operating the caterpillar tractor is not carmen's work under the agreement.

And, in any event, it is evident that claimant could not have operated the Cat Tractor on the date of the occurrence, the general chairman having declared that claimant would have needed "... a minimum of practice to have operated it given the opportunity."

The burden of proving the claim rests with the employees. They have offered nothing other than assertions. Assertions denied do not support a position. It must be concluded that the employees did not establish the claim on the property. See Second Division Awards 4556, 5168, 5309, 3080 and 4296 among many others.

For reasons above the claim should be closed, dismissed or 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.

Rule 31(c) of the Agreement between the parties provides in part:

“*** All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to” (Emphasis added.)

Section 1 (c) of Article V of the August 21, 1954 Agreement also provides that claims must be instituted before the appropriate division of the National Railroad Adjustment Board within nine (9) months from the decision date of Carrier's highest designated officer.

The record in this dispute shows that the decision of Carrier's highest designated officer, the Director of Personnel, was dated January 15, 1968. The claim was instituted before this Board on December 13, 1968 . . . almost eleven months later. Since there is nothing in the record to show that Carrier agreed to extend the nine month period, the claim is barred.

It should also be noted that a 3rd party notice was served to which there was no reply.

A W A R D

The Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1970.