Award No. 5860
Docket No. 5747
2-N&W-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. 16, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO
(Carmen)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement when they improperly augmented the wrecking crew with Supervisory Personnel to perform Carmen's work in Elmore Yard, on February 17, 1967.

2. That accordingly the Carrier be ordered to compensate the Claimants named hereinbelow, in the amount of hours shown opposite each of their names, at the time and one-half rate of pay for February 17, 1967, because of such violation.

Carman G. W. Kirk	Eight (8) hours
Carman W. E. Ford	Two (2) hours and forty Minutes
Carman B. V. Pennington	Two (2) hours and forty Minutes
Carman J. L. Morris, Jr.	Two (2) hours and forty Minutes

EMPLOYES' STATEMENT OF FACTS: Carrier maintains at Elmore, West Virginia, a point on the Norfolk and Western Railway (formerly Virginian), a system of tracks for the making up of trains, storing of empties, inspection of cars and other purposes, defined as Elmore Yards; also a wrecking crew and outfit and a complement of men for the inspection and repairing of cars, and the performance of wrecking service.

On the morning of February 17, 1967, derailment occurred in said Yard, on the East End of no. 14 track, class yard involving the following cars: B. & L. E. - 4602; N&W - 70611; GATX - 35834, 58846 and 58578; NATX - 2909 and 2713. The regularly assigned wrecking crew was engaged elsewhere on a wrecking operation; therefore, for the performance of wrecking service in the rerailment of said cars, an auxiliary wrecking crew was called or formed, composed of the following: General Car Foreman H. L. Davis, Carman W. E. Powell, Carman R. R. Turnmire, Helper Carman Fred Jarrell; which started the wrecking operation at approximately 7:00 A.M. and continued throughout the day. Such crew was later augmented by Roadmaster Akers, Trainmaster Lefler and Car Foreman J. C. White, who performed the same type and kind of work as the carmen and general car foreman, namely, wrecking service.

In summary, we hold that the Carrier did not violate Rule 113 or any other provision of the labor agreement. We therefore, deny the claim at hand."

In Second Division Award 5306 is found:

"The claim is that Carrier violated the applicable Agreement when it used section laborers instead of the Claimants, members of the regularly assigned wrecking crew headquartered at Childress, Texas, to rerail two cars in its Lubbock, Texas, yards.

In interpreting rules substantially similar to these concerned here, this Board has consistently ruled that carmen do not have the exclusive right to rerail cars unless a wrecking outfit is called. See Awards 2208, 3257, 4682 and 4821."

See also Second Division Awards 1744, 2049, 2203, 2343, 3265, 3257 and 5226.

In each of the above cited awards the criteria in determining whether a violation has occurred was not the work involved, but was a wrecking outfit called or used. In each case it was ruled that, in the absence of such an outfit, the work did not belong exclusively to carmen and no violation occurred. Similar, if not identical circumstances are presented in this dispute. The rule cited by the employes is similar and they are taking out of context that portion which they allege has been violated in the same manner as done in the cited awards.

The board has consistently held through a long line of awards that in the wrecking outfit carmen do not have exclusive rights to wrecking service. Claims initiated by the carmen's organization in which cars, locomotives and other equipment have been retacked by train crews, yard crews, laborers, maintenence of way personnel and supervisors under these conditions have been denied by your board. The facts and circumstances involved in this dispute are no different from those in cases cited above, therefore, requires a like decision. Carrier respectfully asks a denial award in this case.

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 the date in question, a derailment occurred at Carrier's Elmore yard. The regular wrecking crew and derrick were working on a derailment at Rock Hill about 20 miles away. Even though two carmen and one carman's helper was utilized at Elmore yard, the Organization contends that the Agreement between the parties was violated. Carrier permitted supervisory personnel to assist in the rerailment of cars, and "improperly augmented the wrecking crew." The work which the Organization claimed was being performed by supervisory personnel was "*** the securing, and/or obtaining of towing cable, and/or blocks, or blocking and/or retrackers, and the delivery and placing of same, in such manner as to facilitate or effect the rerailment of the following cars."

Carrier, in denying the claim, asserted that: 1) the work described did not belong exclusively to the carmen's craft, and 2) under Rule 30 (b) of the Agreement, a supervisor may perform work as part of his duties.

Rule 30 (a) provides:

"None but mechanics or apprentices regularly employed as such shall do mechanic's work."

Rule 30 (b) provides:

"This rule does not prohibit foremen in the exercise of their duties to perform work."

The Organization contends that Rule 30 (b) has been superseded by that portion of Article III of the September 25, 1964 Agreement which provides:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed."

The second paragraph of Article III, however, makes specific allowance for the utilization of foremen or supervisors to perform craft work. That paragraph states in part:

"However, craft work performed by foremem or other supervisory employes employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts."

On the question of whether Rule 30 (b) was superseded by Article III, Award 5242 held:

"Article III does not purport to revoke or supersede Rule 30. It merely supplements the Rule by placing a limit on the amount of craft work to be performed by supervisory employees at points where no mechanics are employed; but it makes no reference to the provision of Rule 30 which recognizes the right of foremen to perform work in the exercise of their duties, and contains no provision inconsistent therewith. All rules must be read together and be given full effect except as prevented by inconsistencies. Consequently, assuming but not deciding, that the issue whether Rule 30 was superseded by Article III of the September 25, 1964 Agreement is properly before this Board, the contention cannot be sustained."

With respect to the question of the exclusivity of work, the awards of the Division have held almost uniformly that unless a wrecking crew was called for wrecks or derailments, such work does not belong exclusively to carmen. See Awards 3257, 3265, 3859, 4337, 4362 and 4901.

In Award 4337, the Board held:

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

From the face of Rule 142 it is apparent that the two sentences supplement one another. The first sentence related to wrecks or derailments outside of yard limits and the second to wrecks or de-

railments within yard limits. The entire Rule clearly deals with the composition of makeup wrecking crews and thus is applicable only when such wrecking crews are called.

In the instant case, no wrecking crew was called. Hence, the work performed in rerailing the car in question did not exclusively belong to carmen under Rule 142. In addition, no wrecking equipment was used, the operation of which would possibly have belonged to carmen under Rule 141 of the labor agreement."

AWARD

The Claim is denied.

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.

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.