



Award Number 5946

Docket Number 5773

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 EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O.
(Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carrier violated the Current Agreement when on February 27, 1967, they failed to call the regularly assigned Wrecking Crew to perform wrecking service at East Gulf, West Virginia, a point on the Norfolk and Western Railway (formerly Virginian) but instead called and organized an auxiliary wrecking crew, composed wholly of workmen from the Department of Maintenance of Way, with a large Derrick Car from the same Department for the performance of work, to which the regularly assigned Wrecking crew has contractual right.
2. That accordingly the Carrier be ordered to additionally compensate regularly assigned members of the Elmore Wrecking Crew, Derrick Men G. B. Dehart and D. B. Lilly, Car Repairer R. R. Aliff and Helper Carman W. G. Wolfe, hereinafter referred to as the Claimants, in the amount of a call or four (4) hours each at the applicable straight-time rate, account of loss suffered due to such violation.

EMPLOYEES' STATEMENT OF FACTS: Carrier maintains a regularly assigned wrecking crew and outfit at Elmore, West Virginia, a point on the Norfolk and Western Railway (formerly Virginian), same being the one and only Wrecking Crew and outfit assigned to the New River Division. Claimants are regularly assigned members of such crew.

On Friday, February 24, 1967, General Car Foreman Davis investigated a derailment at East Gulf, West Virginia, a point on the New River Division approximately thirteen (13) miles from Elmore, after which he advised the assistant superintendent that the wreck cars would be needed for the rerailment operation, at which time the assistant superintendent said he was going to use the claim shell, a large derrick car manned by Maintenance of Way forces. This has not been refuted or denied.

Accordingly, on Monday, February 24, 1967, an auxiliary wrecking crew and outfit was called and organized composed entirely of Maintenance of Way forces, with a large Derrick Car No. 514861, which proceeded to East Gulf and performed the complete wrecking operation, involving the rerail-

Also the Board stated in Award 5564-2:

"In regard to damages the record is clear that claimant did not lose any time from work and thus suffered no pecuniary loss as a result of carrier's action. This Board is not empowered to use sanctions or penalties not authorized or permitted by the controlling agreement therefore, inasmuch as claimant did not suffer any pecuniary loss we must deny the claim in regard to damages."

Carrier has conclusively shown that:

1. Wrecking outfit was not called, therefore, wrecking crew not needed.
2. Agreement in effect on Carrier's property not applicable off Carrier's property.
3. There is no rule or agreement providing for penalty payment under these circumstances.
4. The claimants suffered no monetary damages and are not entitled to additional payment.

Under the weight of evidence produced the claim has no merit and the Carrier requests a denial 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.

On February 24, 1967 Carrier was notified by East Gulf Mine personnel that a coal hopper had derailed at the mine and requested assistance to reraill. On February 27, 1967, Carrier dispatched a clamshell from the Maintenance of Way Department to perform the rerailling work.

Claimants allege a violation of Rule 114 of the Agreement which states:

"When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. * * *"

The Board is again faced with the question which had arisen previously on this property between the same parties: Does the Agreement between the parties extend to work performed on non-Carrier property?

In Awards 5857, 4212, 2992 and 2213, the Board held that it did not unless specifically provided for in the Agreement.

Having made such a determination based on the absence of ownership and control of the property by Carrier, it was not necessary to further determine questions of exclusivity; interpretation of the word "When"; the prerogatives of Carrier, if any; or whether the clamshell was a wrecking "outfit" under the Agreement. See Award 5860, 5768, 5306 and 4337.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. KILLEEN
Executive Secretary

Dated at Chicago, Illinois, this 4th day of June, 1970.