Award No. 6259
Docket No. 6105
2-L&A-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 3 (59), RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

LOUISIANA AND ARKANSAS RAILWAY COMPANY (KANSAS CITY SOUTHERN RAILWAY COMPANY)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement the regularly assigned members of the Shreveport, La. wrecking crew were unjustly deprived of rightful earnings when the Carrier elected to use other than the Shreveport, La. wrecking outfit and crew to agument the Port Arthur, Texas wrecking outfit and crew at a derailment at Beaumont, Texas on October 10th and 11th, 1969.

2. That accordingly, the Carrier be ordered to compensate the following regularly assigned members of the Shreveport, La. wrecking crew, each, at time and one-half rate, the amount claimed

O. A. Warren.....1½ hrs. Oct. 10.....14 hrs. Oct. 11

R. H. Basinger.....1½ hrs. Oct. 10.....14 hrs. Oct. 11

EMPLOYES' STATEMENT OF FACTS: The carrier maintains a force of carmen, a wrecking outfit and a regularly assigned wrecking crew at Deramus Yard, Shreveport, La. The named claimants were members of the regularly assigned wrecker crew, with assigned hours of 7:30 A. M. to 11:30 A. M. and 12 Noon to 4:00 P. M., rest days Saturday and Sunday.

On October 11, 1969 two 85 ton mobile cranes of private ownership were used in lieu of calling wrecking derrick 06 from Shreveport, La. with its regularly assigned crew to assist the Port Arthur, Texas wrecker for wreck in Beaumont, Texas yard. On October 11, 1969 the mobile cranes working with the Port Arthur, Texas wrecker rerailed DUPX 28055, KCS 209134 and KCS 2559.

Deramus Shops and Yard are a Coordinated Facility of the Kansas City Southern Railway Co. and Louisiana & Arkansas Railway Company. Seniority

In the instant care the Shreveport wrecking crew was not called for the Beaumont wreck; therefore, claimants have no contractual right to service at Beaumont.

---

2. Claim is premised on the erroneous contention that all wrecking service belongs to carmen. Numerous Second Division awards hold to the contrary. For example, in Award 5768 it was held:

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

---

3. Petitioner has failed to show that claimants suffered the wage loss claimed. The record shows that both claimants worked their regular assignments at Shreveport, October 10, 1969. The derailment at Beaumont did not occur until the following day, October 11, 1969. At least one of the claimants worked three and one-half hours on October 11, 1969 at Shreveport on which rest day he is also claiming 14 hours overtime in connection with a derailment which was picked up in about seven hours.

In view of all the foregoing, Carrier respectfully requests that claim 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.

Claimants are members of the regularly assigned wrecking crew employed at the Deramus Shops and Yard, a Coordinated Facility of the Louisiana and Arkansas Railway Company and Kansas City Southern Railway Company.

During the early morning hours of October 11, 1969, three railroad cars were derailed in Beaumont, Texas Yard of the Louisiana and Arkansas Railway. The Carrier dispatched a wrecker with a crew of five carmen from its Port Arthur Yard approximately twenty miles away, to undertake rerailing of the cars. A carman regularly stationed at Beaumont was assigned to assist in clearing the wreck. In addition, the Carrier secured from an outside Company two off-track cranes with operators employed by that Company to work with the aforementioned wrecking crew composed of Carrier personnel.

The Petitioner claims that the wrecker stationed at Shreveport, Louisiana, approximately two hundred and ten (210) miles from the scene of the accident, with claimants as crew, should have been called to join the Port Arthur wrecking crew in clearing up the derailment. In support of this claim, it in-

vokes Rules of the Controlling Agreement between the parties and quotes them as follows:

"Carmen's Special Rule 95 — Wrecking Crews

Regularly assigned wrecking crews, including engineers and firemen, will be composed of carmen * * * When wrecking crews are called for wrecks or derailments, outside of yard limits, the regularly assigned crew will be used."

General Rule 28 — Assignment of Work

None but mechanics or apprentices, regularly employed as such, shall do mechanics work as per special rules of each craft, * * *"

We note with interest the fact that the Petitioner omitted, in its quotation of Rule 95 the following sentence:

"For wrecks and derailments within yard limits, sufficient carmen will be called to perform the work."

This was a derailment within yard limits and Petitioner failed to demonstrate how, pursuant to the provision we quoted, the Carrier was obligated to bring claimants from Shreveport to fulfill the requirement that "sufficient carmen will be called to perform the work."

Since Petitioner is relying on the fact that the derailment was outside the yard at which claimants are stationed, we will address ourselves briefly to this facet of its submission. In more than fifteen Awards during the last twenty years, we have stated and restated two basic premises in treating with Rules comparable to Rule 95 of the Controlling Agreement herein. In effect we held that in the absence of a clear and definitive contractual provision to the contrary, derailment work outside a yard is not exclusively the work of carmen and a wrecking crew need not be assigned when no wrecking outfit is used. See Awards 1719, 1757, 2049, 2050, 2208, 2343, 4190, 4362, 4415, 4821, 4848, 4931, 5306, 6177, 6218. In effect then, we have established by this case law, that the Carmen's Special Rules do not provide that out of the yard wrecking service is Carmen Mechanics' work as set forth in Carmen's Classification of Work (Rule 90 of the Controlling Agreement between the parties herein.), and therefore General Rule 28 is not applicable in these premises.

Although the above is sufficient to deny this claim, we did not disregard a most significant aspect of the Petitioner's submission, namely, the use of equipment owned by a non-railroad company and non-railroad employes to man same for the clearing up of the Beaumont wreck on October 11, 1969.

In our Awards 1757 (Carter) and 4190 (Anrod) we went to great plains to lay down the appropriate factors which must be set forth in order to validate a claim such as the one before us.

Petitioner did not controvert or rebut the Carrier's statements that: 1. One of the derailed cars was a tank car of such length that the Port Arthur wrecker was not able, because its boom was of insufficient length, to handle it. 2. If the Shreveport wrecker had been called in, it would not have sufficed, and another long boom on-track wrecker located 655 miles from Beaumont would have been needed to work in conjunction with it and the tracks

would have had to have been repaired before such equipment would have been usable on the wrecked tank car. 3. There would have been a long, undue and unwarranted delay in clearing the main track and disruption of operations if Carrier had to wait to put its own equipment to use. 4. The Carrier does not own any off-track cranes, the only equipment available to accomplish the job in a reasonable period of time, and does not employ an operator familiar with and capable of operating such equipment and therefore, Carrier properly secured equipment and personnel to operate same from an outside Company.

These facts, being uncontroverted and unrebutted, meet the test for the standards we set to determine whether management's discretion and judgment as to what and whom it would use to clear up a wreck was reasonable, proper and not in contravention of the terms and spirit of the Controlling Agreement. See Award 4190.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Secretary

Dated at Chicago, Illinois, this 13th day of March 1972.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.