

Award No. 6324

Docket No. 6084

2-IT-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Don J. Harr when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 154, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

ILLINOIS TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly used other than Carmen (wrecking crew members) to perform wrecking service near Edwardsville, Illinois on February 26, 1970.

2. That accordingly, the Carrier be ordered to additionally compensate Wrecking Crew Members E. Quade, Larry Hernandez, L. E. Crawford, A. R. Houston, Leonard Hernandez and A. D. Gaines in the amount of fourteen (14) hours each at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The Illinois Terminal Railroad Company, hereinafter referred to as the Carrier, operates between St. Louis, Missouri-East St. Louis, Illinois and Peoria, Illinois. Alton, Illinois yards and shops are on a branch line about 30 miles north of St. Louis. Carrier has alternate tracks from Madison, Illinois to Alton, Illinois.

At approximately 11:00 P. M. the night of February 25, 1970 Carrier had a derailment on one of its alternate tracks between Alton, Illinois and Madison, Illinois, derailing the following cars: SP 102099, SP 320030, IC 77232, NP 24843, and UTLX cars 95423, 82492, 72121, 74430, 45687, 90821, 31492, 51342, 45880, 89513 and 86491.

At 6:00 A. M. on February 26, 1970, Loren Isringhauser and 5 of his employes with two bulldozers with side booms was called in to clear up this derailment. He completed the job at 8:00 P. M. on that date. Loren Isringhauser is headquartered at Jerseyville, Illinois which is approximately 28 miles away from the scene of the derailment.

Carrier maintains a wrecking crew at Alton, Illinois (about 8 miles from the scene of the derailment) which consists of a 150 ton capacity steam wrecking derrick and associated tool and bunk cars plus a 60 ton capacity on-rail-off-rail derrick. The regularly assigned wrecking crew members, hereinafter referred to as the Claimants, are E. Quade, Larry Hernandez, L. E. Crawford,

We have twice interpreted and applied Rule 88 (a) and (c). In Award No. 2792 we held:

'The employes now claim that Rule 88 which states in substance

(a) Wrecking crew, * * * when needed, shall be composed of * * * carmen * * * and

(c) When wrecking crews are called * * * a sufficient number of * * * crew will accompany the outfit.

In effect entitles the wreck crew to perform all wrecking services outside of yard limits.

We do not agree with this contention because the language of the rule, as emphasized above, leaves to the management the determination of when the wrecking crew is needed.'

The theory argued by Petitioner in the instant case is that when the Carrier has made a determination that a wrecking crew is 'needed' all the work involved then becomes exclusively reserved to Carmen and Carrier is obligated to assign a sufficient number of Carmen to the wrecking crew to perform all the work. We find no support of the premise in Rule 88 (a) and (c). The only qualification of Carrier's inherent management prerogative to determine the number of employes assigned to a wrecking crew under any circumstances is:

'a sufficient number of the * * * crew will accompany the outfit.'

In this case no 'outfit' accompanied the wrecking crew."

In the instant dispute Carrier did not dispatch the "outfit" and thus under the rules cited by the Union the claims of claimants must be denied. Claimants are the wrecking crew and since no outfit was dispatched under the authority of Award 5768 and others the claims have no merit.

Carrier submits that there is no contractual bar that prohibits Carrier from opening up its main line after a wreck in the manner that was used in this incident. The rules do not support this claim and Division Awards are in support of this Carrier, and accordingly Carrier requests that a denial award be entered by the Board in this dispute.

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.

At approximately 11:00 P. M., February 25, 1970, a road train crew had a derailment at a point known as Bluff Junction. Since the derailment blocked Carrier's mainline they contended that an emergency existed and called an outside contractor to perform the necessary work.

Carrier maintains a wrecking crew at Alton, Illinois, about eight miles from the scene of the derailment. The employes contend that the regularly assigned wrecking crew members were available for service and the Agreement was violated when persons other than the wrecking crew were used to perform the work.

The employes rely upon Rules 127 and 128 of the effective Agreement:

Rule 127 reads:

"Regularly assigned wrecking crews, including engineers and firemen, will be composed of carmen, and will be paid for such service under Rule 10."

Rule 128 reads:

"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."

The Employes also rely upon the Memorandum of Understanding dated March 21, 1960. Paragraph 2 of that Memorandum reads:

"In the event of derailment of wrecks on Illinois Terminal Railroad Company property, XM 52 wrecker truck will be dispatched from Federal, Illinois with two Carmen assigned to XM 52 plus not less than one member of wrecking crew, more if needed."

The Carrier points out, in its Submission to the Board, that on September 1, 1970, the Organization served a Section 6 Notice upon the Carrier requesting that the Carmen's Classification of Work Rule be amended to specifically provide that wrecking service was reserved exclusively to Carmen. They also asked to amend Rule 128 to provide for a penalty payment when other than members of wrecking crews performed wrecking service.

We believe that the serving of the Section 6 Notice was recognition by the Organization that the existing rules did not give Carmen the exclusive right to wrecking service. The Claim is not supported by the existing rules and there is no evidence in the record that Claimants had an exclusive right to the work in question. See Second Division Awards 4286, 4825, 4826, 5574 and 6286.

We will deny the Claim.

Claim denied.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1972.

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