

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. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carman)
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company improperly abolished the wrecking crew job of Carman P. A. Piechoski, North Little Rock, Arkansas, effective February 28, 1972, which has previously been advertised separate from his carman's position in the air room and readvertised it attached to specific carman's job, thus forcing him to bid in position on heavy rail, and
2. That accordingly, the Missouri Pacific Railroad Company be ordered to re-establish the wrecking crew assignment separate from specific carman's position, as it was prior to February 28, 1972, and re-assign Carman Piechoski to his former position affected by Bulletins #16 and #17, and compensate him at the punitive rate for each date he has been forced to work from 3:00 P.M. to 3:30 P.M., beginning February 28, 1972.

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 employees 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 were given due notice of hearing thereon.

Claimant is employed by Carrier as a Carman. Prior to February 28, 1972 he bid for and was assigned to work in the system air brake shop in North Little Rock, Arkansas. He had also bid for and was awarded bulletined position as a regularly assigned member of the North Little Rock wrecking crew. On February 28, 1972 Carrier bulletined the abolition of Claimant's wrecking crew assignment and posted another bulletin for the filing of a vacancy for a position of "Carman-Welder: R56 & Carman on Wrecker". Claimant, apparently with great reluctance bid for this position, giving up his assignment in the air brake room, in order to retain his membership in

wrecking crew. The new position entailed duties which include heavy rail work at the repair track. Claimant evidently prefers to perform the air brake work while retaining his right to be called out to work with the wrecking crew as he had prior to February 28, 1972. Petitioner contends that Carrier violated Claimant's rights under Rules 13(a) and 25(a) and (e) of the controlling agreement which provide for seniority rights. Pursuant thereto Claimant properly occupied wrecking crew assignment in conjunction with the air brake position, each, in accordance with long established practice at the point and seniority subdivision being bulletined as separate jobs. Petitioner requests that the deprivation of seniority rights of Claimant resulting from Carrier's February 28, 1972 actions be rescinded and his status prior to that date restored to him.

Carrier, although dwelling at some length upon alleged past practices as affording it the right to pursue the course it followed on February 28, 1972 was clearly cognizant of Award of this Division dealing with wrecking crew membership as secondary positions which about rules to the contrary or reasons warranting exceptions, shall be assigned to qualified Carman and helpers regardless of their other regularly filled bulletined position. (Awards 2939, 4304, 5807, 6413 and 6438). Thus it did not unilaterally make the changes which are the basis for the claim herein. On February 22, 1972, the problems of availability and effectiveness of Claimant as a member of the wrecking crew which on assignment in the air brake room were reviewed with the General and Local Chairman of Petitioner by the General Foreman at the North Little Rock installation. An agreement was reached which enabled Carrier to make the rearrangements which was subsequently protected. In Petitioner's Exhibit "F" attached to its submission we find this statement of the General Chairman:

"In a meeting with General Car Foreman, Mr. R. W. George, at Little Rock, Local Chairman Daniels and I did agree to the assigning of wrecker jobs from men working heavy rail ..."
(emphasis supplied)

Thus Carrier acted pursuant to a duly negotiated understanding reached with duly authorized employee representatives.

Petitioner states that following protest by Claimant it was advised by its International Union that the understanding reached was not in "keeping with the Agreement" and cited Awards of this Division relative thereto. Therefore, the Petitioner chose to disregard the February 22, 1972 arrangement, and processed the claim herein.

It is one of the primary purposes of the Railway Labor Act and the Adjustment Board established thereunder to encourage the resolution of differences between employers in the Railroad and Air Transportation fields and organizations representing their employees on the properties where disputes have arisen. It is also fundamental to the law that it fosters the concept of collective bargaining. This means that the duly designated employee representative is the exclusive and sole spokesman for

employees in the negotiation and settlement of contracts relative to terms and conditions of employment. It is of the essence of the process that the duly designated officers of the contracting organizations of employees are empowered to secure enforcement of the provisions of Agreements in force between them and employers, parties thereto. In the course of such endeavors, they have the right to make mutually acceptable settlements and adjustments. Rule 31 of the Controlling Agreement between Carrier and Petitioner in the matter clearly embodies these concepts.

There can be no question concerning the right of employee representatives to enter into agreements with employers on a local level, supplementary to the basic contract, for the appropriate implementation of provisions thereof in a fashion best suited to conditions and circumstances prevailing at a particular location and facility. The warring of wrecking crews has lent itself to a number of variations in recognition of these factors. In our Findings in Award 6438 will be found a review of accepted different practices and different shop points of another Carrier without same being regarded as violative of a Rule comparable in nature and intent to Rule 119(a) of the controlling agreement between the parties hereto. In that Award, we stated:

"The Carrier claims that the practice for many years has been for wrecking crews members at large shop points to be assigned to the first shift on the repair track. Unrefuted evidence has been presented supporting the practice claimed by the Carrier, however the practice is not alleged to exist at smaller points where wreckers are assigned or at Birmingham, Alabama, a large shop where a local Agreement was made."

(Emphasis supplied)

In essence, the Awards relied upon by Petitioner denied Carrier the right to unilaterally change the prevailing means for filling the wrecking crews. However, nothing in those decisions deterred the parties from agreeing to revisions believed to be in the best interest of the operation and for mutual benefits which such would secure.

The record herein discloses that the duly authorized employee spokesmen, namely the General Chairman of Petitioner and the Local Chairman of the Organization at North Little Rock were satisfied that Carrier's proposed limitation of membership in wrecking crews at that point to Carmen with regular assignments on the heavy rail was appropriate, advantageous and would expedite the necessary movement to sites requiring their operation. This, as pointed out above is not inconsistent with Rule 119(a) and the referred to seniority provisions of the controlling agreement nor contrary to any of our awards.

An Agreement having been reached on February 22, 1972, Carrier was entitled to effectuate it and Petitioner may not now be heard to protest the action accordingly taken by Carrier pursuant thereto.

Form 1
Page 4


Award No. 6617
Docket No. 6619
2-HP-CN-174

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of June, 1974.