

The Second Division consisted of the regular members and in addition Referee Louis Yagoda when award was rendered.

Parties to Dispute: ( System Federation No. 12, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That the Carrier improperly assigned carmen wrecking crew members not covered by the current agreement, and employees of a private company not party to the agreement to perform wrecking service at Whiting, Iowa on December 25, 26, 27 and 28, 1971.
2. That accordingly, the Carrier be ordered to additionally compensate Carmen J. D. Tunzer, L. Jenkins, J. Adkins, P. Simon, G. Gubbels, D. Gaffey and J. Weatherill, in the amount of forty-two (42) hours each at the time and one-half rate.

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 waived right of appearance at hearing thereon.

Certain facts are stipulated. On December 25, 1971 one of Carrier's trains became derailed at Whiting, Iowa. Whiting is 57 rail miles from Council Bluffs, Iowa. No carmen are employed at Whiting. Carmen are employed at Council Bluffs. Claimants identified in claim are regularly assigned at Council Bluffs and were available for assignment on the night of December 25, 1971.

Carrier decided not to call out wrecker equipment and wrecking crew from Council Bluffs but instead called out 3 carmen from Marshalltown, Iowa. Marshalltown is approximately 165 miles from the derailment site. Those called from Marshalltown are covered by the Agreement of another carrier - Minneapolis and St. Louis Railway Company. In addition, Carrier called in 4 employees of a private company with off-track derricks (also from Marshalltown) to work with the three others.

The seven employees worked 18½ hours, December 25th, 8½ hours December 26th, 8 hours on December 27th and 7 hours on December 28th, 1971.

Employees rely on: the Preamble to the Agreement identifying the functional coverage of said Agreement; Rule 124, stating in part: "Wrecking derrick engineers...and all other work of the same class generally recognized as Carmen's work"; Rule 29 reading, in part: "none but mechanics and apprentices regularly employed as such shall do mechanics' work as per special rules of each craft"; Rules 126 and 127, which read:

"Wrecking crew, including engineers and firemen, shall be composed of regularly assigned carmen, and will be paid for such service as per general rules. Meals and lodging will be provided by the Railway company while crews are on duty in wrecking service.

Except as otherwise provided, this agreement shall apply to those who perform work herein specified in the Maintenance of Equipment (Car and Locomotive), Maintenance of Way, Signal Maintenance, Communications Department, and all other departments of the Railway Company wherein work covered by this agreement is performed.

All or part of regularly assigned wrecking crews, as may be required, will be called for wrecks or derailments.

This does not preclude using other employees to pick up or clear minor derailments when wrecking derrick is not needed."

Pointing out that 11 cars were derailed and that it took a four-day period of 42 hours to clear it up, Employees maintain that the derailment in question was not minor and accordingly Carrier was obligated to call regularly assigned wrecking crews.

Carrier's position is:

- (a) Claimants at Council Bluffs did not have an exclusive right to wrecking service,
- (b) no rule in the Agreement makes it mandatory that a Carrier-owned wrecker derrick be used on all derailments,
- (c) the three Carmen from Marshalltown had as many contractual rights to perform wrecking service at Whiting (a point where no Carmen were employed) as the claimants who held point seniority at Council Bluffs; the men used were licensed escort drivers, customarily used in connection with use of the Marshalltown contractor,

- (d) since Carmen do not enjoy the exclusive right to all wrecking service outside yard limits, and there was no contractual obligation upon Carrier to call the Council Bluffs wrecker derrick, there was no violation of the Agreement when the "off track" equipment and operators from an outside concern were used by Carrier in clearing this wreck.

The scope rules cited give assurance that "wrecking crews" shall include carmen, that "wrecking derrick work" is one of the duties of carmen and that, all or part of regularly assigned crews, "as may be required" will be called for wreck or derailments, but other employees may be used "to pick up or clear minor derailments when wrecking crew is not needed". There is, however, no explicit proscription against the use of outside contractors.

It is our opinion that resort may be had to such outside work, under the existing contract rules, when there is (a) a reasonable showing of necessity for methods, materials or equipment not available to Carrier from its own resources and (b) use or operation of such cannot be handled by its own personnel whether because of differences in skill, lack of internal manpower or because contractor's resources are unavailable without use of latter's employees. We believe that both these conditions were present here. Carrier's choice of off-track mobile equipment appears, from the record, to have been a permissibly valid use of its managerial judgment, despite the fact that it had to be brought from a point 165 miles from the derailment in preference to the use of a wrecking crew only 57 miles away.

Once such a decision was made, management was no longer dealing with a "wrecker crew" within the meaning of the contract scope rules.

As to the use of three employees of M & ST L, rather than Claimants, it is not disputed that the latter line had been acquired by C & NWT and an agreement was then made consolidating the forces of both lines at Marshalltown and that both were thereafter governed by the M & ST L Federated Craft Agreement. Inasmuch as the point involved was outside yard limits and no carmen were there employed, no superior seniority of the Council Bluffs employees was enjoyed over those from Marshalltown.

Given the undisputed fact that licensed "Escort Drivers" (licensing required by the State of Iowa) were needed to accompany the equipment and certain carmen positions at Marshalltown are bulletined as such, Carrier had good practical reasons to choose employees at Marshalltown for use as escorts and then to utilize them at the wreck site for the hooking and handling of cables in connection with the work of the outside contractor.

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 17th day of July, 1974.