Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7409
Docket No. 7319
2-BRCofC-CM-'77

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute:
(System Federation No. 6, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(
(Belt Railway Company of Chicago

Dispute: Claim of Employes:

1. The Belt Railway Company of Chicago hereinafter referred to as the Carrier is and has been in violation of Rules 18 and 93 of the current working agreement as well as the September 25, 1964 Agreement by contracting out the wrecking and rerailing work performed on its property.

2. That the Carrier be ordered to compensate the following named Carmen, G. Marrero, J. Lopez, A. Hensley, T. Sipple and R. Tantillo, hereinafter referred to as Claimants, for four hours and thirty minutes (4 hrs., 30 min.) at the straight time rate each for the violations occuring on May 12, 1975.

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.

By Bulletin dated March 21, 1975, Carrier abolished all seven (7) wrecking crew jobs effective March 30, 1975, and has since contracted with outside concerns to perform wrecking and rerailing service on its property.

According to Carrier, the wrecking derrick to which the seven (7) carmen had been assigned, is a steam operated machine built in April, 1928. Carrier states that the only use made of this derrick crane for a number of years, both prior to and subsequent to the abolishment of the positions in question, has been small jobs of load adjustments rather than heavy wrecking service. Carrier's wrecking derrick has poor mobility, and at the scene of a derailment, it has limited maneuverability until the track forces rebuild the railroad. According to Carrier, modern off-track equip-

ment can be dispatched via highways; can maneuver in and around derailed quipment; and can handle rerailing operations before Maintenance of Way forces even begin to restore the rails.

The above background information helps to put the events of May 12, 1975 in perspective. On May 12, 1975, two (2) cars - P.R.R. # 601453 and T.T.A.X. # 972905 were involved in Carrier's West Yard, # 5 Approach. The Isringhausen Railroad Specialists, a private contracting company, was called at approximately 9:30 AM, and performed all the necessary work (such as laying blocking, hooking cables and chains, rigging, and other related work), in the process of rerailing these two (2) cars. The job was completed at approximately 1:30 PM, at which time the private contractor departed the scene. Petitioner alleges the above-named Claimants were available to perform this wrecking service, but Carrier did not call them.

It is the contention of Petitioner that Rules 18 and 93 of the Agreement confer on the Carmen's craft the exclusive right to perform all wrecking and rerailing work performed on Carrier's property.

Rule 93 of the current working Agreement reads as follows:

> Rule 93 - WRECKING CREWS
>
> "Wrecking crews, excepting wrecking derrick engineers, shall be composed of regularly assigned carmen when available.
>
> Wrecking derrick engineers will be governed by the special rules governing carmen while in wrecking service.
>
> In accordance with present practice, wrecking crew performing wrecking service at locations outside of Clearing Yard will be paid for meal period regardless of whether work is performed or not performed during that period." (Emphasis added)
>
> Rule 18 - ASSIGNMENT OF WORK
>
> "None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft.
>
> In compliance with the Special Rules included in this Agreement, none but mechanics and their apprentices in their respective crafts shall operate oxyacetylene, thermit or electric welders; where oxyacetylene or other welding processes are used, each craft shall perform the work which was generally recognized as work belonging to that craft prior to the introduction of such processes, except the use of the cutting torch in wrecking service." (Emphasis added)

Carrier argues, however, that the above cited rules do not specify or reserve wrecking or rerailing work to the craft and class of Carmen. In addition, Carrier notes that wrecking service work is not covered in Rule 91 - Classification of Work.

Rule 91 - Classification of Work, reads as follows:

Rule 91 - CLASSIFICATION OF WORK:

"Carmen's work shall consist of stripping, building, maintaining, painting, upholstering and inspecting all passenger and freight cars, both wood and steel; planning mill, cabinet and bench carpenter work, pattern and flask making, and all other carpenter work in shops and yards; building, repairing and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and head light boards; tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; repairing steam heat hose for locomotives and cars; operating punches and shears doing shaping and forming; hand forges, heating torches in connection with carmen's work; painting, varnishing, surfacing lettering, decorating and cutting of stencils, all other work generally recognized as painters' work under the supervision of the locomotive and car departments; joint car inspectors (including taking records, for conducting transportation purposes, of seals, commoditues or destination of cars), safety appliance and train car repairers, and wheel record keepers; oxyacetylene, thermit and electric welding work generally recognized as carmen's work.

It is understood that present practice in the performance of work between the carmen and boilermakers will contimue."

The above-cited Rules 18, 91 and 93 are the key rules which must be examined to resolve the instant dispute.

Looking first at Rule 18, Petitioner notes that Rule 18 as presently written, was negotiated on April 26, 1967. Prior to that time, Rule 18 stated:

Rule 18 - ASSIGNMENT OF WORK

"In compliance with the Special Rules included in this agreement, none but mechanics and their apprentices in their respective crafts shall operate oxyacetylene, thermit or electric welders; where oxyacetylene or other welding processes are used, each craft shall perform the work which was generally recognized as work belonging to that craft prior to the introduction of such processes, except the use of the cutting torch in wrecking service."

Petitioner argues that Rule 18, before being amended, pertained only to the use of welders by mechanics and their apprentices, with an exception in regard to cutting torches in wrecking service. Now, however, amended Rule 18 clearly places all work of the various crafts in the position of being the work, exclusively, of the respective crafts.

Carrier, on the other hand, states that the first paragraph of current Ruel 18 appeared in Rule 19 - Temporarily Assigned to Foreman's Position, as the last paragraph. According to carrier, it had absolutely no meaning as it appeared in Rule 19. Therefore, the parties agreed to move it up to Rule 18.

The Board finds that Rule 18 as presently written places mechanics work set forth in the special rules of each craft, in the position of being the work only of mechanics or apprentices "regularly employed as such," within each craft.

Now, Rule 90 through 104 of the current Agreement are all listed under "Carmen's Special Rules".

Rule 91 is entitled, "Classification of Work", and under this rule, no mention is made of wrecking service work, which would seem to indicate that such work is not reserved exclusively to carmen, and Rule 18, therefore, would offer no protection to carmen for such work.

Nevertheless, we must now turn to Rule 93 under the "Carmen's Special Rules", which is entitled specifically, "Wrecking Crews".

It is in regard to the meaning of Rule 93 that Petitioner and Carrier are really "on different tracks". Petitioner argues that Rule 93 (in conjunction with Rule 18) confers on the Carmen's craft the exclusive right to perform all wrecking and rerailing work performed on Carrier's property.

Carrier, on the other hand, believes that Rule 93 is expressly limited to the assignment of regular Carmen to work with the Belt wrecking crane. To put it another way, regular Carmen must be used only when the Belt wrecker is used, although not only on Belt property, but even when used to perform wrecking service for another Carrier.

According to Carrier, Rule 93 is merely a "consist rule" only, that is, a rule which says that if or when you use the Belt wrecker, then and only then, the wrecking crew must consist of carmen.

A careful reading of Rule 93, convinces the Board that the Carrier's interpretation of this Rule is essentially correct, namely, that it is only when the wrecking derrick is used, that the wrecking crew must be composed of Carmen. Note that the first sentence of Rule 93 says:

> "Wrecking crews, excepting wrecking derrick engineers, shall be composed of regularly assigned carmen when available." (Emphasis added)

The parties have agreed to specifically exempt "wrecking derrick engineers" from being carmen, although such engineers are governed by the special rules governing carmen while in wrecking service

The language in Rule 93 is quite explicit in indicating that the parties were referring to those wrecking situations where Carrier's wrecking derrick would be used; otherwise the phrase "excepting wrecking derrick engineers" would have been qualified by such language as, "when or where applicable", in order to cover all wrecking situations.

If there is any one principle of contract interpretation upon which courts, arbitrators, and this Board are agreed, it is that where no ambiguity exists in the language of the Agreement, then the obvious intent of that clear and unambiguous Agreement language governs and must be enforced. The contracting parties must be presumed to have known what they were doing when they chose the language which they did to express their bargained intent.

In the absence of exclusivity to wrecking work under Rules 18, 91, and 93, the burden of proof is on the Petitioner to show that Carmen have the exclusive right to such work by custom, tradition, and practice. However, in the record before us Petitioner merely states that, "Carmen have historically performed the wrecking work on the Belt Railroad". This is a self-serving statement, and does not constitute evidence of probative value. Consequently, Petitioner has failed to show that Carmen have enjoyed the exclusive right to all wrecking service by practice.

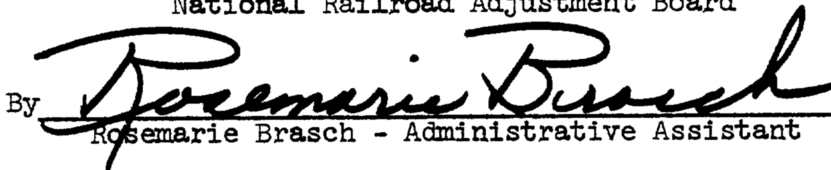
Based on all of the foregoing analysis of both the language and past practice, therefore, we must deny the claim.

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 2nd day of Decmeber, 1977.