Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10080
SECOND DIVISION Docket No. 9724
2-D&RGW-CM-'84

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Denver and Rio Grande Western Railroad Company

Dispute: Claim of Employes:

1. That the Denver and Rio Grande Western Railroad Company violated the terms of the Controlling Agreement when all members of the wrecking crew were not tied up at the same time when returning from a derailment.

2. That Rule 41(c) and letter from the late Chief Mechanical Officer, Mr. P. D. Starr were violated on May 24, 1980 when the full wrecking crew was not paid as per the wrecking agreement.

3. That accordingly, the Carrier be ordered to make the members of the Grand Junction, Colorado wrecking crew, consisting of L. Wilkinson, R. Foreman, T. Myers and C. Johnson, whole, by compensating them for two (2) hours at the rate of time and one-half due to this violation of the agreement.

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 employes within the meaning of the Railway Labor Act as aproved 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.

This is a time claim in the amount of two hours for Claimants R. Foreman, C. Johnson, T. Myers, and L. Wilkinson stemming from the events of May 25, 1980. The Carrier has a MC-4 mobile crane stationed at Grand Junction, Colorado. As a result of a derailment, this mobile crane was called to go to Glenwood Springs to rerail the units. The operator and backup operator accompanied the crane. The Claimants drove to the derailment site in a company truck. When the work was completed, the MC-4 mobile crane proceeded directly to its home station as did the four Claimants in the company truck. The Claimants punched out at 1:00 P.M. on May 25. The mobile crane arrived at Grand Junction at 3:00 P.M.

The Organization contends the Claimant should have been paid until 3:00 P.M., the time the mobile crane arrived at Grand Junction. By failing to do so, the Organization asserts, the Carrier violated Rule 41C and certain letters of instruction issued in 1976 by the Carrier's late Chief Mechanical Officer,

P. D. Starr. The Organization argues the Starr letters establish rules under which the mobile cranes are to operate. The Organization avers these mobile cranes have operated as part of the wrecking service for the six years immediately preceding the claim. The two P. D. Starr letters referred to are, hereinafter, set forth:

"Denver - June 16, 1976

Messrs. J. E. Allen
G. H. Headington
J. E. Armbrust
M. G. McCall

Subject: Mobile Wrecking Crane MC 1 and MC 2 Crew Assignments.

At location where mobile wrecking cranes are stationed, the following will govern the calling of crew members accompanying the crane:

1. Two crane operators will be appointed by the Carrier.

2. In derailments or wrecks inside yard limits, sufficient carmen will be called to perform the ground work.

3. In derailments of wrecks outside yard limits, four carmen will be called from the regular wrecking derrick ground crew to accompany the crane and perform the ground work.

cc: Messrs. J. A. Greener
A. H. Nance
C. L. Olson"

The second letter is dated July 26, 1976, and is addressed to former General Chairman A. B. Cuglietta, as follows:

"In connection with working of our MC-1 and MC-2 wrecking derricks, am quoting for your ready reference the note under Rule 15 (a) of the basic contract:

> Note: Assignments of employes in charge of wrecking crews, or as wrecking engineer, will not be considered as vacancies under this rule, and employes for these jobs will be selected by the management in accordance with the established practice.

It is apparent from our recent experience at Salt Lake City, in which all of the wrecking derrick crew resigned in protest against the application of the above-quoted rule, that the use of wrecking derricks MC-1 and MC-2 has not been fully agreed upon and I think it now is imperative that we reach an understanding.

At our recent meeting there was much discussion about that portion of the Mediation Agreement signed December 4, 1975, relating to Article VII - Wrecking Service. A further close review of this agreement does not indicate that it, in any manner, applies to derricks

owned by the railroad company, but only is specific to equipment which might be leased from outside contractors. I do not see where this agreement has any bearing on our handling of our company-owned MC-1 and MC-2 derricks.

As I see it, Rule 15 and 41 of the basic agreement apply to these machines. Under Rule 15 an appropriate number of carmen will be assigned as groundmen on a seniority bid basis to serve as the derrick crew and any engineer operating the derrick will be selected by the management. Since one man cannot cover all situations at all time as derrick engineer, it is only reasonable that a relief derrick engineer be selected also.

Derrick crews will be called in accordance with Rule 41 whenever the MC-1 or MC-2 are called upon to perform wrecking work.

I do not see any other interpretation which can be placed on the operation of these railroad-owned derricks. I think after you have given this matter further consideration that you will agree with me.

Will discuss this matter further with you at meeting in Grand Junction, at 11:00 A.M., on August 4, 1976."

In support of its position that the Carrier has recognized and acted in accordance with these agreed to understandings, the Organization points out that, had these agreements not existed, the operators of the cranes would have been subject to bid rather than Rule 15 of the controlling Agreement. By its failure to act contrarily, the Organization contends, the Carrier has endorsed those understandings. Rule 41(c) was mutually understood to apply to the mobile cranes.

The Carrier has raised three procedural issues which, upon examination, have clearly been handled, clarified, and amplified in the on-property exchanges of correspondence.

On the merits, the Carrier envisages the main issue to be whether or not the MC-4 mobile crane stationed at Grand Junction, Colorado, qualifies as a wrecker "outfit" under Rule 41(c) of the Agreement. The Carrier's position is that it fails to qualify and is not an "outfit or a wrecker derrick." Carrier, in the alternative, contends that, if a ruling held the mobile crane to be a wrecker outfit, the Claimants could not prevail because they are not part of the "regularly assigned crew." Furthermore, citing Board awards, the Carrier concludes Rule 41(c) does not, in fact, require, even regularly assigned, wrecking crew members, to accompany the "outfit" back to its home station after work on a derailment is completed. With respect to the P. D. Starr letters, the Carrier contends that Rule 103 requires that the proper officer of the company and the General Chairman will meet and agree before local interpretations can be put into effect. The Carrier asserts the proper officer is and always has been J. W. Lovett, Dirctor of Personnel, its highest officer designated to handle such matters.

The record establishes the mobile cranes were considered wrecking cranes by the Carrier's late Chief Mechanical Officer. This was, subsequently, corroborated by the present Chief Mechanical Officer, J. E. Clancy, in his March 2, 1981, letter to the Organization. Notwithstanding, it is evident from reading the Starr letters, supra, that Rule 41(c) was not considered to automatically cover such equipment. Nevertheless, it is undisputed that these cranes have been used exclusively in the Carrier's wrecking service.

The Carrier contends these two 1976 letters, which specifically spell out the size of the crew and the operation in terms of the then prevailing Agreement, are nullities by reason of Rule 103, which states:

> "It is agreed that the Local Officials of the Company and the Local Chairman of the Shop Crafts will not be permitted to place interpretations on any article in the contract when interpretations are necessary same must be taken up with the proper officer of the company and the General Chairman who will meet and agree on same before they are put into effect."

Clearly, the above language is not analogous to the 1976 Starr letters. Starr was the Carrier's Chief Mechanical Officer. He surely was not a local official nor was General Chairman A. B. Cuglietta a local chairman. Actually, the June 16, 1976, document is more an internal memo than a letter. The latter July 26, 1976, document is, in fact, a letter addressed to Cuglietta with carbon copies to three people, including the Carrier's Director of Personnel, J. W. Lovett. Having considered these factors, this Board is unable to agree with the Carrier's position relative to the two documents that they should be afforded no weight or standing in this case.

We view the record as establishing both parties had substantial questions with regard to the nature and operation of mobile cranes. The June 16, internal memo was an issuance of instructions relative to the mobile cranes. The letter to the General Chairman, in essence, said Starr believed Rules 15 and 41 applied to the cranes. Assuredly, the matter was to be discussed on August 4. While we have no direct evidence relating to that meeting, the record indicates the Carrier, thereafter, treated those mobile cranes in accordance with Starr's pronouncements. This is particularly underscored by the Carrier's utilization of Rule 15 to select the crane's operator.

This Board agrees with the Carrier's statement that the mobile cranes are not "outfits" in the historical sense. Nor does it appear the crew was a "regularly assigned crew." That was the essence of the parties' concerns in 1976, and the Starr statements, which recognizing these facts, nevertheless committed the Carrier to applying Rules 15 and 41(c), thereby decreeing that such equipment would, when called for wrecking work, be considered to be the same as "outfits." Finally, the Board finds no evidence these procedures established through the actions of a Carrier official were ever repudiated by the Carrier prior to May 25, 1980.

The Carrier correctly points out that all dispatched employes do not accompany the MC-4 either to or from the work site. The Carrier has also submitted extensive material in the form of past awards. Particular emphasis is placed on Second Division Awards 7664 and 6332. Award 7664 found the applicable language to be less than clear. Award 6332 held the language of the rule involved (113) to be clear and unambiguous and did not provide for crews to accompany an outfit on a return trip.

In this case, we have found the situation of May 25, 1980, to be covered by the application of Rules 15 and 41(c). Having determined the mobile crew stood in the shoes of an "outfit," this Board has examined the record for evidence of the parties' past record relating to such situations. While the Carrier generally asserted that all dispatched employes do not receive the same compensation, the only probative evidence contained in the record is found in seven, unrebutted statements submitted by the Organization. In effect, those statements relating to the 028 Grand Junction wrecker derrick (outfit) indicates that, when assigned carmen return to the home facility ahead of the 028, the Carrier has paid them until the derrick returned. In view of these finds, this Board will sustain this claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1984.