

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Current Agreement of January 1, 1943, (formerly Virginian) as subsequently amended, when on July 23 and 24, 1980, they failed to call the regularly assigned Wreck Crew to perform wrecking service near Elmore-Mullens Terminal WV, a point of the Norfolk and Western Railway Company, but instead called two (2) Employees from another Craft, the Maintenance of Way (M of W), including one (1) Substitute Derrick Wreck Car. Furthermore, Carrier permitted one (1) of the M of W Employees to operate the Clamshell, which is converted into a Substitute Derrick Wreck Car by removing cotter key and bolt from boom, including the bucket, attaching hook(s) and various other attachments to perform wrecking Service.
2. That the Norfolk and Western Railway Company failed to call one (1) Carman in place of the regularly assigned member of the regularly assigned member (sic) of the Wreck Crew who was on vacation and a Wreck Engineer to operate the Substitute Wreck Car.
3. That the Norfolk and Western Railway Company did violate the rules of the Current Agreement, particularly, Rules Nos. 113 and 114, including Article VII of the December 4, 1975 Agreement.
4. Prior to the December 4, 1975 Agreement, the Wreck Crew consisted of two (2) Carmen, one (1) Helper Carman as Groundman, and (1) Carman Derrick Engineer.
5. That because of such violations and capricious actions, the Norfolk and Western Railway Company be order (sic) to compensate Carmen R. D. Cook, fifteen (15) hours at the applicable time and one-half rate of pay, and Carman R. G. Hall eight (8) hours at the applicable time and one-half rate of pay, and seven (7) hours at the applicable double time rate of pay, account of loss suffered due to such violations, and restore the same number of regularly assigned members of the Wreck Crew as was in effect December 4, 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 employes 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.

The Brotherhood of Maintenance of Way Employees, a third party at interest, was advised of the dispute, but limited its response to stating that the dispute was between the Carrier and the Carmen.

As background, there is no dispute to the Organization's contention that prior to December 1, 1975 the Carrier maintained a wreck crew at Elmore, West Virginia, including four employees of the Carmen's craft. As stated by the Organization, "In May, 1979, Carrier abolished and/or removed the Derrick Wreck Car, including the abolishment of all regularly assigned members of the Wreck Crew and the Derrick Engineer's job in June, 1979."

Further, there is no dispute that in July 1979, two Carmen and a Carmen Helper were assigned to a Hoesch Wreck Truck, used in conjunction with wrecking services.

A derailment of seven loaded coal hoppers occurred on July 23, 1980 at Itmann, West Virginia. The Hoesch wreck truck was dispatched, including a Wreckmaster, one Carmen and one Helper, with two Laborers. In addition, the Carrier dispatched a "Clamshell", operated by two Maintenance of Way employees. The purpose of the Clamshell was, according to the Carrier, "to unload or transfer the coal from the derailed cars to facilitate the efficient and safe rerailling of these cars". The Organization characterizes the Clamshell as a "substitute wrecking derrick" capable of assisting in rerailling work and claims that carmen should have been utilized in such wrecking service work rather than Maintenance of Way employees.

Rules relevant to the dispute are as follows:

"CLASSIFICATION OF WORK

Rule No. 110

"Carmen's work shall consist of building, maintaining, painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards (except work generally recognized as bridge and building department work); carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks (except necessary

"repairs made by Maintenance of Way and Signal employees while such equipment is in their charge); building, repairing, removing and applying wooden locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards; tender frames and trucks, pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating rivet heaters in regular rivet gangs; operating bending machines doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint on passenger and caboose cars (not including use of sand-blast machines or removing vats); and all other work generally recognized as painter's work under the supervision of the Locomotive and Car Departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train repairers, wreck derrick engineers and locomotive crane engineers in shop yards (not to include cranes or derricks assigned to other than Mechanical Department); oxyacetylene, thermit and electric welding on work generally recognized as carmen's work, and all other work generally recognized as carmen's work.

Note: Present practice of dismantling freight cars and the operation of machines fabricating car material used in building and repairing cars will be continued."

"WRECKING CREWS

Rule No. 113

Sufficient carmen will be assigned to regularly assigned wrecking crews to perform such work as is generally recognized as carmen's work where sufficient men are available and will be paid for such service under Rule No. 9. Meals and lodging will be provided by the Company while wrecking crews are on duty in wrecking service.

Rule No. 114

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."

"ARTICLE VII - WRECKING SERVICE

1. When pursuant to rules or practices, a carrier utilizes the equipment of a contractor (with or without forces) for the performance of wrecking service, a sufficient number of the carrier's assigned wrecking crew, if reasonably accessible to the wreck, will be called (with or without the carrier's wrecking equipment and its operators) to work with the contractor. The contractor's ground forces will not be used, however, unless all available and reasonably accessible members of the assigned wrecking crew are called. The number of employees assigned to the carrier's wrecking crew for purposes of this rule will be the number assigned as of the date of this Agreement ..."

To the degree that the Organization relies on Article VII, such reliance is ill-founded, since the Carrier did not utilize the equipment of a contractor. As to Rule 114, only the first sentence applies here, since the derailment was outside yard limits. This calls for employing the "regularly assigned crew" in instances "when wrecking crews are called". As noted above, the Carrier removed the Derrick Wreck Car and abolished the Wreck Crew in relation to that equipment in May 1979. There is now a crew assigned to the Hoesch Wreck Truck, and the "regularly assigned crew" was called to "accompany the outfit".

Question remains, therefore, concerning the use of the Clamshell car with other than Carmen as crew. There is no dispute that the use of the Clamshell for other than wreck purposes is regularly and properly assigned to Maintenance of Way employees. Does its use in connection with rerailling outside yard limits bring it under the control of Carmen?

The Board finds no basis to support this. The Carmen's Classification of Work rule includes the phrase (although in a reference to engineers in shop yards) "(not to include cranes or derricks assigned to other than Mechanical Department)". Under the particular circumstances here, the Organization has not established by rule or practice any exclusive right of Carmen to wrecking service outside yard limits -- certainly not to the extent of taking over the Clamshell to which Maintenance of Way employees are normally assigned.

It follows that there is no basis to require the Carrier to "restore the same number of the regularly assigned members of the wreck crew as was in effect December 4, 1975". Any claim as to this should have been made, if at all, in a timely fashion at the time of the crew abolishment.

In this dispute, the Organization places reliance on Award No. 7926, in which the award sustained the claim of a wrecking crew even absent a "wreck outfit". That award, however, is not of precedential value here. First, in Award No. 7926, an outside contractor was involved, bringing into play rule provisions not otherwise applicable.

Second, and directly in point, Award No. 7926 states:

"...nevertheless, there still remains the fact that wreck crew assignments are bulletined positions and as such are subject to the abolishment procedures set forth in Article III, Rule 24(h) of the June 5, 1962 National Agreement. The Board notes that such wrecking crew positions apparently were never formally abolished at Washington, Indiana in accordance with Article III, Rule 24(h) either at the time the derrick was reassigned in 1972 nor any time subsequent to the removal of the derrick. This failure to so abolish the wrecking crew positions, the Board believes, accounts in some substantial part for the confusion on the part of two minor Carrier officials stationed in Washington, Indiana in believing that a regularly assigned wrecking crew did exist at Washington, Indiana as per their letters to the Organization under dates of June 2, and July 29, 1976 respectively. The Board agrees with Carrier's position that said letters are in no way binding on the Carrier, but the Board does lend some significance to the fact that a wrecking crew was presumed to have existed four years after the removal of the derrick from the property, notwithstanding the fact, that vacated wrecking crew positions due to employee attrition were never subsequently filled..."

In the claim under review here, there not only was an abolishment of the wreck crew in 1979, but also the establishment of a new Hoesch Wreck Truck crew, consisting of Carmen, which was employed in this situation. In the narrow circumstances involved here, there is no showing that Carmen jurisdiction extends to the use of the Clamshell operated in normal fashion by Maintenance of Way employees.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1984.