Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11988
SECOND DIVISION Docket No. 11830
91-2-89-2-142

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(
(CSX Transportation, Inc.
(The Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM:

1. That the Louisville and Nashville Railroad Company, hereinafter referred to as the Carrier, violated the Agreement, particularly, but not limited to, Rule 108, when they failed to call wrecker crew members D. R. Tracy, H. V. Jones, G. Fink and L. Whitsell, hereinafter referred to as the Claimants, for a derailment in Carrier's Howell Yards, Evansville, Indiana, on January 3, 1988.

2. And accordingly, the Carrier should be ordered to additionally compensate Claimants in the amount of three (3) hours each at the rate of time and one-half as a result of said violation.

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.

There is no dispute in this record. The facts are that flat car JTTX 159165 derailed within Howell Yard, Evansville, Indiana, on January 3, 1988. On that date four (4) on-duty Carmen utilized the Galion crane, lifting and rerailing the flat car.

It is the Organization's position that the crane was used as a "wrecker." In violation of the Agreement, the Carrier failed to call out and utilize the four (4) members of the Wrecking crew. The Organization argues that the regular assigned Wrecking crew members should have been called in accordance with Rule 108 of the Agreement.

The Carrier denies any Agreement violation pointing to the fact that the wrecker was not used. Carrier further provided a letter from the General Car Foreman stating that the Galion crane and shop forces have "on numerous occasions" rerailed cars in the Yard. Based therefore on language and practice, the Carrier maintains its actions were consistent and regulated by the Agreement.

The disputed Rule 108 states:

> "WRECKING SERVICE--USE OF REGULAR CREW"
>
> For wrecks or derailments outside of yard limits, the regular assigned crew will accompany the wrecking outfit. Within yard limits, when wrecker is used, necessary number of members of the wrecking crew will be called to perform the work."

We find that the central issue that this Board is being asked to determine is whether the Galion crane, when used, under these circumstances, to rerail is by substitution, a wrecker. If it is used in place of a wrecker, then by the reasoning of the Organization, it fits within the language of the Rule, and the Carrier's actions constituted a violation.

We find that the Rule is clear to the use of the "wrecker." No language in the Rule suggests that the Galion crane or any other piece of equipment or procedure can be considered a "wrecker" when used on derailments. We find no evidence that the parties have substituted an Understanding or have developed a practice in the use of this crane as equal to the "wrecker." On the contrary, the Carrier supported with probative evidence that it had been the practice on the property of rerailing with the Galion crane and without a wrecking crew. The Organization did not refute said past practice.

We are thereby compelled to follow the Agreement language as written and the practice as followed by the parties. As the "wrecker" was not used, the Agreement was not violated. The Claim must be denied.

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 16th day of January 1991.