

Award No. 1442

Docket No. 1362

2-C&EI-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That on September 26, 1948, at Chicago Heights, Illinois, the carrier violated the controlling agreement by using Section Foreman Frank Cellini and a crew of 3 section men to rerail SHPX 2517, GATX 36898 and RI 262016.

2. That in consideration of the aforesaid violation, Carmen R. Songer, S. C. Hurleyel, Don LeBeau and John Price, each be compensated at the applicable rate of pay for an amount of time equal to that consumed by Section Foreman Cellini and his crew.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a force of carmen at Chicago Heights, Illinois during the twenty-four hours of each day and Carmen R. Songer, S. C. Hurleyel, Don Lebeau and John Price hereinafter referred to as the claimants, were, on September 26, 1948, regularly assigned to the 11 P. M. to 7 A. M. shift. At approximately 9 P. M., September 25, 1948, SHPX 2517, GATX 36898 and RI 262016 were derailed within the yard limits of Chicago Heights, Illinois. At approximately 11:30 A. M. September 26, 1948, Section Foreman Frank Cellini and his crew of 3 men were called and effectuated the rerailment of the aforementioned cars, using rerailing frogs, blocks, etc., between 11:30 A. M. and 2:30 P. M. September 26, 1948.

These claimants were available for said service and were willing to perform the work had they been called upon and this is substantiated by their signed statements, copies of which are submitted and identified as Exhibits A, B, C and D.

This dispute has been handled in accordance with the provisions of the controlling agreement effective July 15, 1944 and subsequently amended, up to and including the highest carrier officer to whom such matters are subject to be appealed, with the result this officer has declined to adjust it.

POSITION OF EMPLOYEES: It is submitted within the meaning of the controlling agreement, particularly Rule 101 reading,

“Regularly assigned wrecking crews, not necessarily including engineers, will be composed of carmen, where sufficient men are

this rule would perhaps apply. In the instant case, however, the work performed was not that of carmen mechanics and the classification of work rules were not, therefore, violated.

It is further pertinent that the scope of the controlling agreement is limited to those who perform the work specified “* * * in this agreement ***” in the maintenance of equipment, locomotive and car departments. The work herein made a subject of complaint is not specified “* * * in this agreement * * *”, nor was it performed in the maintenance of equipment, locomotive or car departments.

THE EMPLOYEES NAMED IN THE STATEMENT OF CLAIM WOULD NOT HAVE BEEN USED HAD THE SERVICES OF CARMEN MECHANICS BEEN REQUIRED. It is the carrier's position that the work made a subject of complaint was not that of a carman mechanic. Without prejudice to the position thus stated, it is pertinent to discuss the right of the named claimants to the penalty demanded. It is of interest to note that there apparently existed considerable confusion on the part of the employes for whom the penalty should be claimed. First, claim was filed for six members of the regular wreck crew at yard center. Four months later this claim was **withdrawn**. A new claim was filed in behalf of the claimants named herein. This claim is dated December 28, 1948, four months after the date of the alleged violation. (See carrier's Exhibit A.)

The members of the regular wreck crew were on duty at the time the cars in question were rerailed by the switch engine and crew. Had the services of as many as four carmen mechanics been required, the regular wrecking crew would undoubtedly have been called. Further, there were carmen mechanics on duty at Chicago Heights who could and would otherwise have been used had the services of carmen mechanics been required. In any event, claimants, who were off duty at the time, would have under no circumstances been called to perform the work had the services of carmen mechanics been necessary. In order to sustain claim to a penalty, it should be established that the claimants would and should have been called to perform the work. Under no circumstances would the claimants named herein be called had there been carmen's work to be performed in connection with rerailing cars, and claim in their behalf should not be recognized.

It is the carrier's position that the services of carmen mechanics were not required in connection with rerailing the cars here in question, which were rerailed by the switch engine crew in the customary and usual manner. The carrier maintains that the carmen's agreement was not violated and we respectfully request that your honorable Board so hold.

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.

The parties to said dispute were given due notice of hearing thereon.

It is conceded by the organization that if within yard limits the yard forces can rerail cars without any outside assistance they may do so; on the other hand, it is contended that under the plain language of the rule, if it is necessary for the yardcrews to have any assistance “sufficient carmen will be called to perform the work,” and that the utilization of any other assistance encroaches on carmen's work. Award 1322 cited by the carrier is not applicable to the situation within yard limits, but applies on line of road. On

the other hand, Award 222 of this Division is directly applicable under an almost identical rule and therefore controls. The claim will therefore be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1951.