

Award No. 1765
Docket No. 1662
2-LT-USWA, CIO-'54

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

UNITED STEELWORKERS OF AMERICA, C. I. O.

THE LAKE TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: These claims are for six (6) hours pay for Car Repairmen Carl Novasak, R. J. Eberle, Ray Kennedy, and J. Burger, because of Contractor Stein's employees rerailing Car No. X644 on Track No. 792 B, with Lake Terminal Railroad engine No. 1019, at 11:15 P. M. on January 21st, 1953.

EMPLOYEES' STATEMENT OF FACTS: The facts are as given above and no denial has been made by the company. In a letter addressed to M. A. Melia, union staff representative, dated June 12, 1953, the company wrote as follows: "Since the track in question is the property of National Tube Division, United States Steel Corporation, there is no basis for these claims and for this reason the claims are denied. The Steins Company mentioned in the employees' claim is a salvage company doing contract work for National Tube Division, United States Steel."

POSITION OF EMPLOYEES: The Lake Terminal Railroad Company services the tracks of National Tube Division, United States Steel Corporation and Lake Terminal Railroad employees, including the grievants, re-rail and repair cars on these tracks every day of the year.

The company is definitely in violation of Article XIII, Section 4, Rule 1 of the agreement, which reads: "Employees in the Car Department shall consist of Carmen, (Inspectors and Repairmen) apprentices, other craftsmen, helpers and laborers, and only Carmen and Apprentices shall do work generally recognized as Carmen's work."

The union and the Lake Terminal Railroad Company have agreed that re-railing of cars by Stein's employees in National Tube Division tracks is not a violation of our agreement, provided they use their own equipment.

However, in the instant case, Stein's employees used Lake Terminal Railroad equipment, namely engine No. 1019, to re-rail the car, and, in our opinion, this is in violation of our agreement.

Finally, we call to the attention of this honorable board four claims which were settled by the company and paid on August 31, 1953.

These claims were numbered 115-116-117-118, on account of Yardmaster Adamson re-railing engine No. 1008 on Track No. 168, a National Tube Division Track.

Therefore, we ask this Honorable Board to rule that the Lake Terminal Railroad Company was in violation of the agreement and the claims as set forth herein be paid.

CARRIER'S STATEMENT OF FACTS: Car No. X644 was derailed January 21, 1953 on track No. 792B which is owned by National Tube Division, United States Steel Corporation. The contractor in question performs scrap reclamation work for account of the National Tube Division and on the day in question this car was rerailed by the contractor's employes with the assistance of Lake Terminal locomotive No. 1019. Contractor Stein, as agent for National Tube Division, requested the service of the locomotive for the purpose of rerailing the car. The organization has stated in the claim that the rerailing was performed at 11:15 P.M. January 21, 1953. This is in error as the rerailing in question was performed at 11:15 A.M. on that day.

POSITION OF CARRIER: The rerailing of car No. X644 was performed on National Tube Division tracks, and it is the position of the carrier that work performed on industry owned tracks is not exclusively the work of Lake Terminal Railroad car repair forces. This rerailing occurred on the first turn when the claimants were on duty and under pay. The agreement between the parties does not provide for an eight hour penalty for less than an hour's work performed, nor does it provide two days' pay for one day's work. If the rerailment service on car X644 had been performed exclusively by Stein Company employes we are of the opinion the instant claim would not have been presented by claimants.

It is, therefore, respectfully submitted that the claim be denied and the carrier requests that the Board so decide.

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 appears that a car belonging to the National Tube Division, United States Steel Corporation, became derailed on tracks owned by the same company. An engine and engine crew of the carrier assisted employes of an independent contractor performing scrap reclamation work for the National Tube Division to rerail the car. It is conceded that the contractors could rerail cars on the property of the National Tube Division without violating the carmen's agreement with this carrier. The contention is that because the services of carrier's engine were required, it was a violation of the agreement in not using employes under the carmen's agreement with the carrier to do the rerailing.

The only service requested of the carrier was the use of an engine and engine crew. This was the extent of the service contracted by the carrier. If carrier had undertaken the rerailment of the car as distinguished from the providing of an engine, a claim could have been made by employes of the carrier. Likewise, if carrier had undertaken to provide a wreck train, a claim by the carmen would be a sustainable one. But where only an engine is provided at the instance of the National Tube Division or its independent

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contractor, the work performed by the contractor's employes in assisting in the rerailment does not infringe upon the rights of the carmen employed by the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May, 1954.