

Award No. 2740

Docket No. 2453

2-MP-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That on Sunday, April 17, 1955, at Fort Smith, Arkansas, the Missouri Pacific Railroad, hereinafter referred to as the Carrier, violated the controlling agreement by using D. E. Anderson, General Foreman, W. H. Ridlen, Car Foreman, Ed Wiley, Roadmaster, R. C. Spears, Assistant Trainmaster and R. R. Overfelt, Road Foreman of Engines to rerail diesel engine No. 4247 in Fort Smith Yards.

2. That, for and in consideration of the aforesaid violation, Carmen M. M. Shultz, R. Reed and J. T. Doyle and Carmen Helpers L. C. Dyer and J. L. Ball, hereinafter referred to as the Claimants, be compensated for a four (4) hour call.

EMPLOYEES' STATEMENT OF FACTS: Carmen M. M. Shultz, R. Reed and J. T. Doyle and Carmen Helpers L. C. Dyer and J. L. Ball, hereinafter referred to as the claimants, are employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, at Van Buren, Arkansas.

Claimants Shultz, Reed, Doyle and Ball are regularly assigned on the 7:30 A. M. to 4:00 P. M. shift Monday through Friday, with Saturday and Sunday as rest days.

Claimant Dyer is regularly assigned on the 4:00 P. M. to 12 Midnight shift Friday through Tuesday, with rest days of Wednesday and Thursday.

At Fort Smith, Arkansas, on Sunday, April 17, 1955, at 7:25 P.M. diesel engine No. 4247 was derailed in the yards. The necessary work in the rerailing of this engine was performed by D. E. Anderson, general foreman, W. H. Ridlen, car foreman, Ed Wiley, roadmaster, R. C. Spears, assistant trainmaster, and R. R. Overfelt, road foreman of engines. The claimants are subject to call and were available for this service.

In the instant case, the yard crew working with engine No. 4247 needed no assistance in rerailing their engine. It has always been the practice for train, engine and yard service employees to rerail equipment which becomes derailed while being handled by them, provided this can be done without resort to the use of tools of the Maintenance of Equipment Department. Although in the instant case the work was done under the direction of carrier officers, this does not constitute a violation of the agreement. Your Board has held accordingly in numerous awards, some of which have been cited above.

Now there is no conflict between the practice on this property as it relates to carmen and the practice as it relates to employees in train, engine and yard service. Locomotives and cars have always been rerailed by the crew handling them at the time derailed, and it is recognized as a service which may properly be required of them when the rerailing can be accomplished with rerailing frogs, blocks, etc. All yard engines on this property carry rerailing frogs or such frogs are available to them at convenient locations. Blocks are available to yard crews for use in rerailing cars being handled by them at the time derailed. See First Division Award No. 13710, and numerous others in regard to rerailing of locomotives and cars by train, engine and yard service employees.

For derailments within yards, if Maintenance of Equipment Department tools are needed, a sufficient number of carmen and helpers are used to perform the work, if available. When the wrecker is used for wrecks or derailments, a sufficient number of the regularly assigned wrecker crew is used to accompany the wrecker.

None of the claimants hold seniority at Fort Smith; Van Buren being the point where they are employed and hold seniority, and no work was performed on engine No. 4247.

There is no support for this claim in the rules, interpretations, settlements and practice on this property. Accordingly, it should be denied.

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 employees 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.

On Sunday, April 17, 1955, one wheel of Diesel Engine No. 4247 was derailed in the yards at Fort Smith, Arkansas.

Van Buren, Arkansas, located 10 miles from Fort Smith, Arkansas, maintained a wrecking crew; Fort Smith did not maintain a wrecking crew. The said wrecking crew was not called out.

The said Diesel Engine was rerailed without the use of jacks or other tools commonly used by Maintenance of Equipment Department Employees in wrecking service. There was no damage to the engine.

It was conceded by the employees that if the Yard Crew can reraill cars or locomotives within the yard limits without any outside assistance, they may do so.

Article 32, paragraph 4, of Special Instructions Supplementary to The Uniform Code of Operating Rules reads as follows:

"32. Special Instructions Relating to Operation of Diesel Engines and 'Eagle' Trains:

4. To prevent serious damage to traction motors, train, engine or yardmen should make no attempt to reraill a diesel engine under its own power, or use rerailling frogs for that purpose.

In case of derailment of a diesel engine, notify train dispatcher and await his instructions. Train Dispatcher will contact Master Mechanic or his representative, who will issue necessary detailed instructions or provide proper mechanical supervision."

Accordingly, the Trainmaster at Van Buren was notified, and he in turn notified the General Foreman of the Mechanical Department and the Trainmaster.

The real factual issue involved here is whether the Yard Crew or the officers and supervisors of the Carrier did the said rerailling.

The burden of proving a claim falls on the employees.

The record on behalf of the carrier was that the Switch Crew did the said rerailling within the yards under the supervision and instruction of the officers of the carrier. It was agreed by the employees that the carrier had the right to have supervision on the job.

A letter dated June 13, 1956 signed by the Switch Crew denied that they had anything to do with the said rerailling.

The employees' statement of claim was not proved by the greater weight of the record or of the evidence.

AWARD

Claim of employees denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February, 1958.