

Award No. 3892

Docket No. 3756

2-CRI&P-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O.
(Carmen)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

- (1) That the Carrier violated the current agreement, particularly Rule 114, by the improper assignment of carman apprentice to wrecking service on January 20, 1959.
- (2) That, accordingly, the Carrier be ordered to compensate Carman Charles Taylor for an additional four (4) hours pay at the applicable straight time rate.

EMPLOYEES' STATEMENT OF FACTS: On January 20, 1959, a derailment occurred within the Silvis, Illinois yard limits of the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the carrier. The carrier maintains a large car shop at Silvis, Illinois where many carmen are employed. Carman Charles Taylor, hereinafter referred to as the claimant, is employed as a carman at Silvis.

Following the derailment, the carrier ordered Lead Carman McCrellious, Carman Freeze and Apprentice P. Stone to the scene of the derailment.

Lead Carman McCrellious directed the rerailling operation, which work was performed by Carman Freeze and Apprentice Stone, with the aid of car jacks and other rerailling tools. Carman Freeze worked one side of the derailed car while Apprentice Stone worked the opposite side, each placing a car jack and positioning rerailling frogs.

The grievance and claim was presented to Master Mechanic K. O. Thomas by the local chairman as evidenced by copy of his letter submitted herewith and identified as Exhibit A. Master Mechanic Thomas' reply of April 3, 1959 to the local chairman is submitted herewith and identified as Exhibit B.

The carrier contends that as apprentices are permitted, under Rule 111, to perform work as defined in Rule 110, it was not a violation of the agreement for an apprentice to accompany Carmen Freeze and McCrel-las to the derailment in order to secure experience and training in work of the carmen's craft. As a matter of fact, the two carmen were sufficient to reraill the car.

Without relinquishing our position as above, we submit that even if claim had merit, which we deny, there can be no basis for penalty rate for work not performed. Your Division, as well as the other Divisions of the Adjustment Board, has so ruled in numerous cases.

On basis of the facts and circumstances recited in the foregoing, we contend there was no violation of the employees' Agreement.

We respectfully request your Board to deny this claim.

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.

Parties to said dispute were given due notice of hearing thereon.

On claim date a lead carman, a regular carman, and an apprentice to the trade were assigned to reraill a freight car within yard limits at Silvis, Illinois. The regular carman and the apprentice did some of the rerailling work. How much such work, if any, was done by the lead man is not established in the record.

An apprentice does not become a carman until he has satisfactorily completed his prescribed course of instruction (Rule 109). Thus, only two carmen were assigned to the rerailling work. The second sentence of the fourth paragraph in Rule 114 says that "for wrecks or derailments within yard limits, sufficient carmen will be called to perform the work." The record does not contain enough information on which to base a firm conclusion as to how many carmen were sufficient to perform the work in the instant case. Petitioner disregards this point and contends, *a priori*, that because the apprentice here did some work, there could not have been enough carmen on the job.

The Division is unable to accept such reasoning. To follow it would be to hold that, merely because the apprentice performed some of the service, twenty regular carmen here, for example, would have been an insufficient number. Accordingly, the Division is unable to find that (1) sufficient carmen were not assigned and (2) Rule 114 was violated.

From the above it must follow that the fundamental issue here is whether under other rules of the agreement carrier was prohibited from working any apprentice like claimant on the reraillment in Silvis yard.

Rule 111 defines a carman apprentice as one who is involved in the work items set forth in Rule 110. The latter rule does not mention the rerailing of freight cars but does close with the phrase, "and all other work generally recognized as carman's work". Inasmuch as the previously quoted sentence from Rule 114 gives rerailing within yard limits to carmen, the latter work must be held covered by Rule 110; and Rule 111 in itself may not be held to have been violated here.

Rules 126 and 127, for regular and helper apprentices respectively, set forth in broad categories of work the number of days that said apprentices are in general to spend learning the duties therein. Said Rules say that this division-of-time schedule "is designed as a guide and will be followed as closely as conditions will permit". This language can only reasonably be interpreted as allowing some flexibility in apprentice assignments. It does not constitute an absolute or rigid formula that bars any and all minor deviations for the purpose of acquainting apprentices with work which is properly carman's service but which might not appear listed under the four general categories.

Coupling this finding with the language of Rule 122, which says in effect that both parties intend apprentices to be given a chance to learn the carman's trade, including yard rerailing service, the Division is driven to the conclusion that carrier here did not violate any of the agreement's provisions on the assignment of carman apprentices.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1961.