Award No. 4065

Docket No. 3783

2-MP-CM-'62

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. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. — C. I. O. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated the current agreement, particularly Rules 26 and 117, when train crew made repairs to cars GATX 79595 and MILW 952154 at Council Grove, Kansas, on June 10, 1959, when carmen were available to perform this work.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman E. L. McCoach, who was available to perform this work, in the amount of a four (4) hour' call at the straight time rate, on the aforementioned date, for repairs to cars GATX 79595 and MILW 592154, which was performed by train crew.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, employs carmen at Council Grove, Kansas. On June 10, 1959, train No. 62, called for 7:10 P. M. at Council Grove, arrived at 7:20 P. M. and it was found necessary to repair brake beams on cars MILW 592154 and GATX 79595. Conductor Toops and the train crew performed the repairs to these cars.

Carman E. L. McCoach, hereinafter referred to as the claimant, was available to perform this work. These repairs were made in a terminal, not on line of road.

POSITION OF EMPLOYES: That the carrier violated the controlling agreement, particularly Rule 26 (a) reading:

> "ASSIGNMENT OF WORK: RULE 26 (a) None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, except foremen at points where no mechanics are employed."

and Rule 117, reading in pertinent part:

The duties of the one carman employed at Council Grove did not include work on the through freight trains passing through Council Grove.

This claim is not supported by Rules 26 and 117 cited by the employes. The cars in question were not "repaired" as alleged in the employes' statement of claim. The claim is entirely lacking in merit and must 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 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.

Council Grove, Kansas, is a point where carrier's freight train crews are changed. It contains no usual shop facilities. However, a carman, the instant claimant, is employed there, with work hours from 7:30 A. M. to 4:00 P. M. (half hour off for lunch). In carrier's words "his normal duties are to couple the air and do other work on the locals originating at Council Grove" and "do not include any work on through freight trains". Carrier also states, in its letter of June 30, 1959, from its master mechanic to claimant, that in the future cars like the ones here involved will be set out "so proper repairs can be made by carman working at Council Grove".

At 7:20 P. M. on June 10, 1960, carrier's freight train No. 62 arrived at Council Grove. While the train was standing on the main track, according to carrier, the outbound crew "in looking over their train" found the brake beams down on two of the cars; on one "the brake hanger was broken", and on the other "the brake hanger pin was missing". The train crew performed no thoroughgoing repair or replacement work; their work on the two cars was confined to cutting out the brakes and wiring up the brake beams so that the train could move safely.

Petitioner contends that carrier should have called claimant to do said work, under Rules 26(a) and 117, the latter of which mentions the inspecting, maintaining, and repairing of all freight cars. Carrier argues that the service performed by the train crew was not maintenance or repair work within the meaning and intent of said Rules. In carrier's view service was minimal and incidental to getting the train over the road to a shop point where proper maintenance and repair work on the cars could be done.

The Division finds that the work done by the train crew was indeed minimal and did not fully conform to the usual definitions of maintenance and repair. "Maintain" means to keep in a state of efficiency. "Repair" means to restore to a sound and efficient state. The train crew did neither of these things in any complete or final sense. But this finding cannot dispose of the issue raised by the contradictory contentions of the parties. The train crew did temporarily restore the cars and the train to a state that was efficient enough to enable them to move to their destination. The repairs were minor and minimal. But they were still repairs of a sort, and Rule 117 does not distinguish degrees of repair. Moreover, the tenor of Carrier's submissions suggests and persuades that, if claimant had been on duty, he would have been

asked to do the work. These things being so, the Division must find he should have been called to do it.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, tnis 21st day of September, 1962.

DISSENT TO CARRIER MEMBERS TO AWARD NO. 4065

The majority are gravely in error in the award rendered in this dispute.

The Findings of Award No. 4065 sustained the contention on the part of the Organization that the action of the train crew of through freight train No. 62 in wiring up two brake beams on cars in their train at Council Grove, Kansas, so that these cars could continue in their train to a car repair point, constituted repairs belonging exclusively to carmen. Because the conclusion of the majority is wholly without support in the record and in the Findings, this dissent is required.

The majority correctly found that Council Grove, Kansas, is not a repair point and that no usual shop facilities are located at Council Grove. This finding compelled a denial award under the following language which appears on the front of the Agreement here applicable:—

> "It is understood that this Agreement shall apply to those who perform the work specified in this agreement in the Maintenance of Equipment Department." (See Second Divn. Awards 3171 & 3172, Carmen v. Mo. Pac.)

The language in the Findings correctly recognized and quoted Carrier's words to the effect that the normal duties of the claimant, who is the only carman employed at Council Grove, are to couple air and do other work on locals originating at Council Grove, and that his duties do not include any work on through freight trains.

Although the majority quoted out of context from the Master Mechanic's letter made a part of the record by the Employes, they apparently failed to grasp the import of said letter. The last two paragraphs of said letter, found on page 2 of Employes' rebuttal statement, read as follows:

> "Investigation of this claim, indicates that at the time #62 was in Council Grove, no carman was on duty and there is nothing in the carmen's agreement that would have been violated when this crew, in performance of their duties, secured the aforementioned brake beams to prevent derailments, etc.
>
> "However, due to delay incurred account train crew endeavoring to secure brake beams, instructions have been issued that cars will

be set out in the future so proper repairs can be made by carman working at Council Grove, * * *."

It seems clear enough from the above quotation contained in the record over the signature of the Master Mechanic that no repairs were made but that the brake beams were secured to prevent derailments, etc., and that as a managerial prerogative, a decision had been reached that in such future cases such cars will be set out in order to avoid delay to trains and so that proper repairs can be made. This statement militates against any conclusion that "repairs of a sort" were made.

The majority further stated, without equivocation,

> "The Division finds that the work done by the train crew was indeed minimal and did not fully conform to the usual definitions of maintenance and repair."

and having correctly stated this proposition, then proceeded to discuss the meaning of the words "maintain" and "repair" to the effect that these words mean to keep in a "state of efficiency" and to "restore to a sound and efficient state," followed by the statement that

> "The train crew did neither of these things in any complete or final sense."

Having correctly set forth all the foregoing in the Findings, the majority then made a right-about-face and concluded

> "But they were still repairs of a sort and Rule 117 does not distinguish degrees of repair."

Having reached this unwarranted conclusion, an attempt was made to rely upon the alleged tenor of Carrier's submission to the effect that had the claimant been on duty he would have been asked to do the work. A search of the record, including Carrier's submission, fails to reveal any statement which could raise the inference that such is the case.

The Award is patently wrong and we dissent.

W. B. Jones
F. P. Butler
H. K. Hagerman
D. H. Hicks
P. R. Humphreys