Award No. 5912
Docket No. 5703
2-LT-USWA-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

UNITED STEELWORKERS OF AMERICA AFL-CIO, DISTRICT No. 28

LAKE TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That on April 7, 1968, the controlling agreement was violated when Assistant Trainmaster T. Podboy rerailed Car L&N 39961 on Track 212-1/2.

(2) That, as penalty for this violation, Carmen A. Shlapak, E. Dukate, D. Rice, and B. McDivitt be compensated four (4) hours pay each at their respective rates of pay; the aforesaid four (4) hours being the minimum pay for a wreck call under the agreement.

POSITION OF EMPLOYES: It is submitted that the carrier is in violation of page 1, paragraph 4 (definitions) which reads: "Supervisor—Any individual employee of the Company engaged directly or indirectly in the capacity of supervising and directing the working forces, **and who does no manual work** except in **emergencies** or for the **purpose of demonstration.**" (Emphasis ours)

Neither of these contingencies were present in the instant case, when Mr. Podboy used wood blocks and wedges to rerail the aforementioned car.

We now submit rule 14, section 4, para. C of the agreement, which reads, in part:

". . . the rerailing of cars and engines when required and any work connected with railroad cars shall be considered Car Shop work."

In addition, we introduce the following excerpt from a letter, written by Mr. E. J. Parkinson, director of labor relations for the carrier, and highest officer delegated by the carrier to handle disputes. The letter is dated January 23, 1968, is addressed to Mr. Charles Quinn, staff representative for the organization, and is Mr. Parkinson's confirmation of his decision to deny the time claims appealed to his office concerning another case.

On Page 2, last paragraph, Mr. Parkinson states:

"That part of Rule 14, Sec. 4 c, pertaining to the rerailing of cars and engines, is SPECIFIC IN ITS INTENT THAT SUCH WORK SHALL BE CONSIDERED CAR SHOP WORK." (Emphasis ours)

In Second Division Award No. 1741, it was held:

"The record justifies the conclusion that, since the train and engine crew, under the direction of Assistant Trainmaster Wallace, was able to rerail the wheels of engine No. 1010, without assistance, not calling the claimants was not a violation of the controlling agreement."

In addition to the foregoing, although it is alleged by the organization that Supervisor Podboy performed the rerailing, the fact is that he worked with the assistance of a train crew, and it has been well established and conceded by the organization that the rerailing of cars and engines by train crews is not a violation of the controlling agreement. Further, the definition of "Supervisor" of the schedule agreement, which is relied on by the petitioner, reads as follows:

"Supervisor"—Any individual employee of the Company engaged directly or indirectly in the capacity of supervising and directing the working forces, and who does no manual work except in emergencies or for the purpose of demonstration."

The language cited above can only be considered to apply to supervisors in the Maintenance of Way Department and not the Transportation department. Surely, work performed by a supervisor of the Transportation department in line with his duties as such cannot constitute a basis for a claim by the employees of the car shop. Furthermore, even though the derailment was simple in nature, it did constitute somewhat an emergency in the Open Hearth department of the Lorain Works (the site of the derailment) as the Open Hearth was out of scrap and a delay in the rerailing the car in question was undesirable. It has been the carrier's experience of having a delay of at least one and one half to two hours for the arrival of car shop employees before rerailing can be progressed. Accordingly, in view of the circumstances in the instant case, the supervisor referred to in the alleged violations exercised extremely good judgment in bringing about a quick rerailment and averting a possible delay on the part of the Open Hearth department.

In further support of the carrier's position, track 212-1/2, on which the derailment took place is an industry owned track over which the carrier has no control and performs no service on or over such track except at the express request of industry. Therefore, the carrier cannot arbitrarily impose upon the industry any obligation to pay for services not requested. In the instant case, the service of the car shop employees was not requested by the Industry.

For the reasons advanced above, the carrier respectfully submits these claims must be dismissed.

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.

On April 7, 1968, a railroad car became derailed on a track owned by the United States Steel Corporation, Lorain Works. The car was rerailed by Car-

rier's Assistant Trainmaster with the assistance of a train crew. The work, accomplished in about fifteen minutes, consisted of placing a block under the car wheels and having a locomotive pull the car onto the track. The claims here are submitted by the four members of Carrier's wrecking crew who allege they should have been called.

Petitioner relies primarily on Rule 14, Section 4(c) which provides in part that ". . . the rerailing of cars and engines when required and any work connected with railroad cars shall be considered Car Shop Work." It also contends that Mr. Podboy, a supervisor, should not have performed any manual work.

These claims cannot be sustained, in our judgment. There is no direct evidence that Assistant Trainmaster Podboy was the one who placed a block under the car wheels. Moreover, in a prior case involving these parties, this Board (without Referee) held that Carrier was not required to call the wrecking crew when "under the direction of Assistant Trainmaster . . . and Yardmaster . . . of The Lake Terminal Railroad, the train and engine crews, without assistance, rerailed cars . . . on the National Tube Division Tracks." (Award 1744) The Board also held (without Referee) that this Carrier did not violate the contract with respect to supervisors' performance of manual work Paragraph 4-Definitions) when "the train and engine crew under the direction of Assistant Trainmaster . . . was able to rerail the wheels of Engine No. 1010 without assistance . . ." (Award 1741) Finally, in another case involving these parties the Board held in part that the Agreement was not violated when Carrier's engine crew was utilized to help in a rerailment of a car on the track of United States Steel Corporations' National Tube Division. (Award 1765)

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April, 1970.

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