

Award No. 6015

Docket No. 5879

2-C&O-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the service rights of carmen Richard A. Kelly and Opie R. May and rules of the controlling agreement were violated July 10, 1968, account other than carmen (maintenance of way supervisors and section men) performed carmen's work (rerailling car in yard limits) in violation of rule 32 and carmen's special rules 154 and 158.

2. Accordingly, carmen Richard A. Kelly and Opie R. May are each entitled to be compensated four (4) hours at carmen's applicable straight-time rate.

EMPLOYEES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, owns and operates a facility at Cane Fork, West Virginia, consisting mainly in the handling of coal hauling freight cars to the mines for loading and to the main lines for delivery to various industries and to dock operations, where a number of Carmen are employed and hold seniority under Rule 31 of the Shop Crafts' Agreement.

Carmen Richard A. Kelly and Opie R. May, hereinafter referred to as the claimants, are regularly assigned at Cane Fork on the second shift. On July 8, 1968, regularly assigned yard crew of transportation department derailed C&O 86483 at the derail in west end of passing track Cane Fork, W. Virginia yard limit. Next day, July 9, 1968, two carmen, along with several Maintenance-of-Way employes, attempted to retrack car with the use of retrackers and motive power. The car was pulled into such a position that it was necessary to use acetylene torch to remove the brake beams by cutting them loose and then jack the car on with the use of jacks. This was to be done the following day. On July 10, 1968, track supervisor, track foreman, and assistant foreman, along with five or six maintenance-of-way employes, arrived with mechanical jacks and base block and started to retrack car 7:45 A. M., 8:30 A. M., two

The carrier submits that sufficient carmen were used to reraill C&O 86483 on July 10, 1968, that there has been no violation of Rules 32, 157 and 158, and that the claim of the employes should therefore be denied in its entirety.

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 waived right of appearance at hearing thereon.

On July 8, 1968, a derailment occurred on west end of Carrier's Cane Fork, West Virginia yard limit. On July 9, the following day, a brief attempt was made to retrack by use of retrackers and motive equipment, but was discontinued. By this time, the car had been pulled into such a position that it was necessary to use an acetylene torch to cut certain brake beams loose in order to be able to jack the car up and back on the track. The next day, July 10, a track supervisor, track foreman, an assistant foreman, and several Maintenance of Way employes arrived with the necessary jacks and blocks and started to retrack the derailed car. Two Carmen who were on duty in the yard also assisted. The Assistant Foreman used the acetylene torch to cut the beams and the Maintenance of Way employes moved the beams. The car was then jacked on the track by Maintenance of Way and the Carmen employes. It is the position of the Organization that Carrier violated Rule 32(a), Special Rule 154 and Carmen's Special Rule 158 when Maintenance of Way supervisors and section men were used to cut brake beam and assist in rerailling of the derailed car.

Rule 32(a) is:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed."

Special Rule 154 is:

"Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, * * * oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work."

Carmen's Special Rule 158 is:

"When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

Carrier contends that there was no violation of any rule of the Agreement and that past practice was followed in this instance.

We must conclude under the facts, which are undisputed in the record, that section men did render assistance to Carmen in handling the jacks, jacking blocks and in cutting the brake beam from the car; all of which constitutes a violation of the Agreement. See Award No. 1936 (Stone).

We are unable to make a determination as to the amount of work Carmen were deprived and, therefore, hold that one Claimant be allowed payment of 4 hours at the pro-rata rate.

AWARD

Claim sustained for one Claimant, as per findings, at the pro-rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of October, 1970.