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Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6447
SECOND DIVISION Docket No. 6262
2-CMStP&P-CM-'73

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

Parties to Dispute: System Federation No. 76, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)

Chicago, Milwaukee, St. Paul & Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Carrier violated Rule 88 "C" of the Current Agreement on February 12, 1971 when it improperly allowed other than Carmen, i.e., Sectionmen, to rerail tri-level Car A.T.S.F. 89435 which was on track #4 on the East end of the Classification Yard at St. Paul, Minnesota. This location is within the Yard limits.

2. That accordingly the Carrier be ordered to additionally compensate Carmen Walter Peterson and Henry Vejtruba in the amount of three (3) hours at the prevailing time and one-half rate.

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.

There is no disagreement concerning the facts. On the afternoon of February 12, 1971, two cars required rerailing within the Carrier's St. Paul, Minnesota Classification Yard. Carrier's Roadmaster called upon claimants, classified as carmen, during their regularly assigned hours and working at the yard repair track, to rerail one of the two cars. While they were in the process of performing this work, the Carrier officer ordered section men, members of the Maintenance of Way force to place blocks and wedges under the derailed wheels of the other car, enabling the switch engine to pull it on to good track.

Petitioner charges that use of other than Carmen to perform this rerailing work violated the second sentence of Rule 88 (c) of the controlling Agreement, which reads:

"For wrecks and derailments within yard limits, sufficient carmen will be called to perform the work."

The application and interpretation of this Rule has received extensive treatment in Awards of this Division over a fifty year period. The Carrier's con contentions in support of what was done, run contrary to these decisions. (See Awards 222, 827, 1008, 1126, 1127, 1128, 1327, 1442, 1760, 2048, 2164, 2738, 3560, 3629, 4186, 4222, 4581, 4600, 4674, 4964, and 6030.) Most of the rulings cited by Carrier were relative to the invoking of the first sentence of Rule 88 (c) which deals with wrecks and derailments outside of yard limits and are not applicable to the facts herein. Nor does the fact that Rule 85 of the Agreement, setting forth the scope of work of the Carmen Classification, fails to refer to wrecking and rerailment work, justify carrier's position. We have consistently held, in effect, that Rule 88 (c) is a special rule which deals with a specific situation and provides the standard to be followed when it arises. The parties negotiated and codified an Agreement. This Board is not empowered to substitute our judgement of what may be right or preferable in an operation for that agreed upon and set forth in the Agreement.

The Carrier relies heavily on Award 4833 (Johnson) which involved a dispute between the same parties. That case is clearly distinguishable and is not applicable to the matter before us. There we found that there existed an accepted practice of long standing on this property that rerailing of locomotives in the roundhouse would be performed by roundhouse forces. As with all exceptions to a rule, they are to be narrowly applied.

Based on the record herein, it must be found that two carmen were sufficient to effectuate the rerailing of both cars. There is no explanation offered as to why the Roadmaster did not utilize the two carmen to install the blocks and wedges, which they had brought to the scene, under the derailed wheels of the car involved. Carrier's uncontroverted averment was that this entailed no more than fifteen minutes work and it could easily have been accomplished by the carmen who were there.

Petitioner failed to give a rationale for the second part of its claim. It did not contest the fact that the work on the second car took fifteen minutes. The claimants were there and at best it could be held that they would have had to work that additional time if the work had been properly assigned to them. They are, therefore, entitled to the difference between that which they were paid for work performed on February 12, 1971, which they completed at 7:00 P.M., and that which they would have received had they worked until 7:15 P.M. on that day.

A W A R D

Claim 1 - Sustained.

Claim 2 - Sustained only to the extent set forth in the Findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of February, 1973.