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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6455
Docket No. 6294
2-MP-CM-'73

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

Parties to Dispute:

(System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company Railroad Company violated the controlling agreement, particularly Rule 120, when other than carmen (supervisors) assisted in rerailing switch engine #333, Poplar Bluff, Missouri, December 29, 1970.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carmen C. E. Rainwater, A. N. Payne and C. C. Berry in the amount of four hours (4') each at the pro rata rate for December 29, 1970, and in addition to the money amounts claimed herein the Carrier shall pay Carmen Rainwater, Payne and Berry an additional amount of 6% per annum compounded annually on the anniversary date of the 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 employees 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.

The parties are in agreement that a switch engine was derailed within the yards; that Rule 120 of the controlling Agreement applies; that a wrecking crew was not required; and that the second sentence of Rule 120 is involved. The second sentence reads: "For wrecks or derailments within yard limits, sufficient carmen and helpers will be called to perform the work, if available."

The Organization contends that since only one carman was called, who obviously could not perform the required work alone, that the supervisors who were present at the derailment must also have performed some of the work.

The carrier concedes that three supervisors were present at the rerailling of the diesel engine. The carrier insists that they only directed and supervised the work. Article 32, paragraph 4, of Special Instructions states, in substance, that no one is to attempt to reraill a diesel engine but must notify supervisors and await instructions. This is stated as the reason for the presence of the supervisors to direct the rerailling.

In addition, the carrier contended that the work was done by the yard crew and that one carman was sufficient to assist them, thereby complying with the second sentence of Rule 120.

The burden of proof rests upon the claimants. Arguments and assertions are not sufficient to sustain that burden. Significantly, there is no statement of the carman to describe what work was performed by supervisors, if any. Rule 120, does not state that rerailling cars within yard limits is exclusively the work of carmen. It states only that sufficient carmen and helpers will be called. The Organization did not argue that the yard crew should not perform the work.

The prior Awards submitted to support the Organization's position are not helpful to the claim. Second Division Award No. 1327, found that carmen should have been called because, "hoist, jacks and other tools of this craft", were used. In the present case the Organization has offered no proof or evidence that anything more than blocks and frogs were used and that the engine's own power supplied the required force. Award No. 1298, refers to the work of a wrecking crew and has no application to this case. Award No. 4770, referring to a derailment within yard limits, found that a, "sufficient number of carmen", should be used. Apparently, one carman was sufficient in this case to assist the yard crew. It is not proof, as claimed by the Organization, that because the carman, "assisted", that the supervisors must have performed work which is not within their jurisdiction.

We find that there is no proof in the record, nor is there any reason to believe that the supervisors performed carmen's work or that they did anything more than to direct and supervise.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killian
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1973.