

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

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the current agreement, particularly Rule 86 thereof, was violated when other than carmen were used to rerail car within yard limits, Vancouver, Washington.
2. That accordingly, the Carrier be ordered to compensate Carman W. J. Garrison for five (5) hours and thirty (30) minutes at the time and one-half rate, for September 26, 1973.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 September 26, 1973, a derailment occurred within the yard limits of Carrier's Portland-Vancouver terminal. Carrier decided to use a Cline Truck to clear the derailment. The Cline Truck is a three-axle diesel highway truck convertible to on-rail operation, and is equipped with an extension crane and hydraulic outriggers. Four Carmen were called to do this work and to operate the Cline Truck, plus Carmen Helper Pahukoa.

Petitioner contends that the controlling Agreement was violated, particularly Rule 86, when "other than Carmen" (Pahukoa in this case) were called "to rerail car within yard limits" and that Carman Garrison, who was off duty and available for call, should have been called instead.

The record indicates that the specific work which Pahukoa was assigned to perform consisted of work preparatory to rerailing; for example, driving a pickup truck to obtain additional blocking, placing grain doors on muddy ground to facilitate the movement of the Cline truck, and placing blocks by the rail so that the Cline truck could cross over. The record does not indicate that Pahukoa set blocks, wedges or jacks, or did any jacking, as part of the actual rerailing operation.

Additionally, the record shows that Pahukoa set and blocked the outriggers of the Cline truck. However, this too was work preparatory to rerailling and did not constitute participation in actual rerailling operations.

Petitioner contends that none other than Carmen is permitted "to perform wrecking service within yard limits", citing Rule 86 and a number of prior Awards as precedent. Firstly, we are not persuaded by the evidence in the record that Pahukoa did in fact engage in rerailling or perform "wrecking service". Secondly, most of the cited Awards do not relate to the specific issue before us, but relate instead to the use of section men, roundhouse forces, yardcrews, switchcrews and outside forces to perform wrecking service and rerailling of cars. The remaining Awards deal with emergency situations, which issue is not before us here.

None of the Awards cited by Petitioner deals with the issue of whether a Carman Helper may be called to assist Carmen in wrecking service or reraillments within yard limits. That is precisely the issue before us in this dispute and is the sole issue which we decide here.

Carrier on its part cites a number of prior Awards on the contention of non-exclusivity to Carmen of wrecking work under Rule 86. We restate that this is not the issue in this dispute and, accordingly, we make no determination here on the issue of "exclusivity".

Factually, on the merits, Petitioner refers us to two statements in the record; one by Pahukoa and one by Carman Stewart. Pahukoa states that he "performed rerailling service", but that the specific work he actually did was "working as a ground crew member setting and blocking outriggers on the Cline truck. . ." Thus, there is no indication that he performed or engaged in actual "rerailling of cars", which is the precise language of the claim. His reference to "rerailling service", therefore, is purely conclusory.

Stewart states as a conclusion that in his opinion the Carman Helper was "working as and in place of a Carman", but that, as to the specific work, he "observed a Carman Helper being used on one side setting and blocking the outriggers, cables, etc." Here, too, there is no statement that the Carman Helper actually engaged in "rerailling of cars".

Prior Awards of this Division support the proposition that other than Carmen can be assigned to perform common labor incidental to wrecking service and rerailling of cars. Moreover, that in the performance of these and other tasks the assignment of a Carman Helper to assist Carmen is not violative of the Agreement.

Thus, for example, in Awards 1757, 2343, 4901 and 4931, section men were used to "perform the common labor incidental to rerailling"; i.e., securing and handling frogs, blocks, wedges and reraillers. In Award 646, Carmen Helpers were used to assist Carmen in repairing brake beams. In Award 3481, Carmen Helpers were used to help Carmen build floor rack for refrigerator cars, and in Award 6975 "to assist in applying interior lining to box cars". In Award 6455, the

engine rerailling was done by the yard crew together with one Carman. In Award 3409 shop laborers and Carmen Helpers were used to assist in wrecking service. In Award 4197 a Carman Helper was used to assist the Carman in placing a Nolan frog over the rail, which work was incidental to rerailling a box car.

To the same effect, see also Awards 1039, 1380, 1467, 1502 and 3617.

To paraphrase these Awards, the term "Helper" is what the name implies - "A Helper", and if in fact all that the Carman Helper did was to assist Carmen, such work is not proscribed by the Agreement. We so find in this case as to Carman Helper Pahukoa.

Accordingly, we are compelled to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of June, 1976.

LABOR MEMBER'S DISSENT TO
AWARD NO. 7072, DOCKET NO. 6873

The majority in Award 7072 has reached a conclusion inconsistent with the facts of record, the applicable agreement rules and prior Awards of this Division.

The majority attempts to justify its decision first by the type of work performed giving rise to the dispute. They state in part:

"Thus, there is no indication that he performed or engaged in actual 'rerailing of cars', which is the precise language of the claim."

Award No. 1298 issued by this Board long ago set the standard which has been followed and which should have been followed here where it states in part:

"The substance of Rule 106 (a) is that the wrecking crew shall perform all services incidental, or necessary, to the proper completion of a given task. All the required operations in wrecking service, both simple and complex, subject to the provisions of Rule 106, are, by contract, a part of the carmen's craft. To permit the less important work to be assigned to persons outside of the carmen's ranks is to whittle away the significance and purpose of the rule. Such practice, in fact, would be a breaking-down of a condition agreed upon in collective bargaining, and established by a recognized rule. It would open the door to other departures from the literal wording of the rule, and invite a result where the exceptions to the rule would become more important than the rule itself." (Emphasis added)

The majority then attempts to support its erroneous conclusion by citation of Award 646 (Carmen Helpers assisting Carmen in repairing brake beams) 3481 (helpers used to assist Carmen build floor racks for refrigerator cars), and 6975 (helper assisting Carmen

lining box cars). They then go on to say:

"To paraphrase these Awards, the term 'Helper' is what the name implies - 'A Helper', and if in fact all that the Carman Helper did was to assist Carmen, such work is not proscribed by the agreement....."

The majority has failed to comprehend the difference in the language of the rules used to justify its decision.

Rule 85 and similar rules set forth what work helpers may perform in assisting Carmen. It does not include wrecking service.

A comparison should be made with the rule here involved, i.e., "For wrecks or derailments within the yard limits, sufficient Carmen will be called to perform the work." and Rule 90 which covers Road Work. That rule reads:

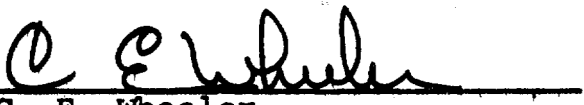
"When necessary to repair cars on the road or away from the shops, carmen, and helper when necessary, will be sent out to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, putting cars on center, truss rods, wheels, and other work of similar character."

Rule 85 makes no provision for the use of helpers and specifically provides that sufficient Carmen will be called.

Another point of comparison is the language in wrecking service rules on many other railroads. For instance Rule 120 of the Missouri Pacific Agreement reads:

"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 and helpers will be called to perform the work, if available."

The function of this Board is to interpret the rules and is bound by the language contained therein. The majority failed to stay within the bounds of its function and we must register our dissent thereto.


C. E. Wheeler
Labor Member