

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. 7, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Carrier violated the current Agreement, particularly Rules 86 and 26 of the Controlling Agreement, when on February 7, 1974, it improperly allowed other than Carmen, i.e., section foreman, section hands and supervisors, to rerail B.N. 607101, which was on what is known as "Ice House Track" on the east end of the classification yard at St. Cloud, Minnesota. This derailment is in the yard limit.
2. That accordingly, the Carrier be ordered to additionally compensate Carmen S. Kirchner, A. Brandl, A. Theisen and G. Euteneur in the amount of four (4) hours at the prevailing straight time rate for February 7, 1974.

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 claim date, a freight car became derailed within yard limits at the St. Cloud, Minnesota yard. Employees other than Carmen were assigned to perform and did perform re-railing work. The Organization is dependent upon Rule 86(B) the pertinent part of which is as follows:

"(B) \*\*\* for wrecks or derailments within the yard limits, sufficient Carmen will be called to perform the work."

The Organization also depends upon Award Nos. 7124, 4770, 6015 and 1442 in support of this Claim. Carrier contends that Carmen do not have exclusive right to re-rail cars when a wrecker is not called; that an emergency existed and, therefore, Carrier had the right to clear its track with any means possible. Carrier also contends that there is no basis for damages if the violation is sustained.

It is the opinion of this Board that Award No. 4770 decided the issue involved in this dispute when this Board stated, in part:

"If the derailment had been outside yard limits, the Superior Wrecking Crew should under Rule 88 have been called. But since it was within yard limits and the wrecker was not used, 'sufficient Carmen' with seniority at the point should have been called.

The work of clearing the derailed cars from the tracks was wrecking service, and the use of maintenance of way employees in lieu of Carmen was improper."

Also, Second Division Award Nos. 4317, 4332, 3405, 5034 and 7107 upholds the theory that when Carrier violates the Agreement, there must be some provision to promote compliance.

Therefore, this Claim will be sustained.

A W A R D

Claim sustained.

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 25th day of January, 1977.