

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Southern Railway Company

Dispute: Claim of Employees:

1. That on August 27, 1979, the Carrier violated the controlling Agreement by calling two carmen employed by the Kentucky and Indiana Terminal Railroad to reraill engine No. 2679X on Southern Railway property within the yard limits of New Albany, Indiana.
2. That the Carrier be ordered to compensate Carmen G. O. Bauer and R. L. Linne, Huntingburg, Indiana for four (4) hours and fifteen (15) minutes each at the rate of time and one-half.

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 were given due notice of hearing thereon.

At 2:45 p.m. and again at 4:25 p.m. on August 27, 1979, the Carrier called two Carmen employed by the Kentucky and Indiana Terminal Railroad to assist in rerailling Carrier Engine No. 2679X within the yard limits at New Albany, Indiana. The two Carmen from the foreign carrier performed fifty-five minutes of rerailling service on the first call and the second time it took one hour and thirty-five minutes to reraill the engine. The Carrier does not employ any Carmen at New Albany. The Organization brings this claim on behalf of two Carmen employed by the Carrier and stationed at Huntingburg, Indiana. Each Claimant seeks four hours and fifteen minutes of pay at the premium rate which includes the time the work actually consumed plus estimated travel time from Huntingburg to New Albany.

The Organization contends Rule 135 of the applicable agreement obligates the Carrier to call sufficient Carmen if the wrecking service is performed in yard limits and if the services of Carmen are necessary. According to the Organization, the Carrier by its own actions proved that Carmen were necessary since two Carmen from a foreign line were actually called to both derailments. The Organization cites Second Division Award No. 4603 (Daly) which sustained a similar claim between these same parties.

The Carrier raises several defenses. First, the Carrier points to certain letters of understanding executed in 1936 and 1943 whereby the Carrier and Organization agreed that unless jacks were used in the rerailling process, the Carrier need not call any Carmen. Blocking was used to reraill the engine on August 27, 1979. Second, the Carrier asserts there is a longstanding past practice of using Kentucky and Indiana Terminal Carmen to reraill cars and engines at New Albany. The practice developed because the Carmen from the foreign line are much closer to New Albany so the rerailling work is more quickly accomplished in the interest of maintaining efficient railroad operations. Lastly, the Carrier argues that Carmen simply do not have the monopolistic right to reraill cars pursuant to the Carmen's Classification of Work Rule.

The Organization has objected to the Carrier's reliance on the alleged letters of understanding regarding the use of jacks since the Carrier did not raise this argument on the property. We agree. The Carrier has failed to offer any reasonable explanation for not raising the alleged agreement before filing its submission with this Board. Perhaps these letters have been brought up in prior disputes between these parties but they have not been timely incorporated into this record. Thus, this Board is precluded from considering the substance of Carrier's Exhibit J.

This dispute is controlled, not by the Classification of Work Rule, but by applying Rule 135 which states:

"When wrecking crews are called for wrecks or derailments outside yard limits the regularly assigned crew will accompany the outfit. For wrecks and derailments within the yard limits sufficient carmen will be called to perform the work if their services are needed." (Emphasis added.)

In resolving this case, we must follow Second Division Award No. 4603 (Daly) where this Board found that the use of Carmen from a foreign railroad violated the same contract language found in Rule 135. Because Carmen were twice used to reraill the engine on August 27, 1979, the services of Carmen were obviously necessary. As to the alleged past practice, the Carrier has not provided us with sufficient evidence showing an established, exclusive and continuous practice of calling Carmen employed by a foreign carrier to derailments within yard limits where no Carmen are stationed. Most of the examples cited by the Carrier to support the existence of a past practice concerned derailments which occurred after the date the disputed work was performed in this case.

Therefore, each Claimant is entitled to four hours and fifteen minutes of wages but at the straight time rate of pay in effect on August 27, 1979.

#### A W A R D

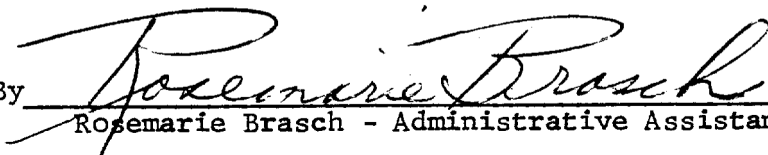
Claim sustained to the extent consistent with our Findings.

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Award No. 9063  
Docket No. 9182  
2-SOU-CM-'82

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April, 1982.