

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 9181  
Docket No. 8698-T  
2-C&NW-CM-'82

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States and Canada  
( Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Carman G. G. Gubbels, Council Bluffs, Iowa, was denied his contractual rights when the Carrier failed to call him for wrecker work and allowed Foreman L. A. Wilwerding to perform carmen's work at derailment at Dennison, Iowa on October 19, 1978.
2. That the Chicago and North Western Transportation Company be ordered to compensate Carman G. G. Gubbels six and one-half (6½) hours pay at the overtime rate plus twenty-five (25) cents premium pay.

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 to appearance at hearing thereon.

On claim date, the Assistant Foreman attempted to call certain employees for overtime regarding a derailment. He received no response which the Employees attributed to the fact that the three (3) men called had just been released from work and did not have sufficient time to get home. In any event, instead of making additional calls, he proceeded to the site of the derailment, and at that site he performed work which the Employees claim was improper; such as "...setting blocks, setting outriggers, and hooking cables."

On the property, Carrier admitted that there were a minimum of calls made but stated that because "...only one wheel...was derailed (he) departed for the derailment." Further, it was asserted that two trucks and two carmen were sufficient to rerail one wheel and any work performed by the Foreman was "...strictly instructional..." as two (2) carmen were sufficient to rerail one wheel of a freight car."

The Organization submitted certain documents executed by the Employees who were at the scene which deny any type of instructional or Supervisory activity by the Foreman.

Although the submissions to this Board seek to broaden the scope of our inquiry, the basic factual assertions and contentions set forth above were the ones under review on the property and thus, they frame our issue.

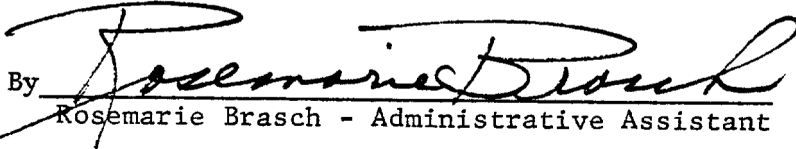
The clear implication of the January 2, 1979 denial is that the Foreman knew, before he proceeded to the derailment site, that only one wheel was derailed; he still attempted to call additional employees. That factor, plus the unrebuted evidence of the type of work performed lead us to conclude that the claim is valid.

A W A R D

Claim sustained.

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, 22nd day of July, 1982.