Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9716
SECOND DIVISION Docket No. 9119
2-C&NW-CM-'83

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon 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 Employes:

1. Carmen R. J. Heiman and J. D. Taylor, Green Bay, Wisconsin, deprived of wages to which they are contractually entitled in the amount of 10 hours pay at the pro rata rate, account the Chicago and North Western Transportation Company called a mechanic-in-charge to perform the carmen's work at derailment at Combined Locks, Wisconsin on August 27, 1979.

2. That the Chicago and North Western Transportation Company be ordered to compensate Carman R. J. Heiman and J. D. Taylor as follows:

R. J. Heiman: ten hours at pro rata rate.
J. D. Taylor: ten hours at pro rata rate.

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 employes 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 August 27, 1979, a derailment occurred involving two freight cars at Combined Locks, Wisconsin. The Carrier dispatched Mechanic-in-Charge Bruce J. Volker and one carman from Green Bay, Wisconsin to assist in the rerailing of the cars.

The claim basically contends that the Claimants should have been used in lieu of the mechanic-in-charge. The Organization believes Rules 10, 29, 53, 126 and 127 were violated.

There is apparent in the record a factual dispute regarding the exact circumstances under which the mechanic-in-charge and the carman were sent to the derailment. Thus the factual dispute must be resolved before proceeding further.

The Organization asserts in their submission that the mechanic-in-charge and the carman were sent to assist a contractor in the rerailing of the cars.

In their submission, the Carrier makes the following statement:

> "The Carrier is obligated to furnish a specified number of groundmen only when outside contractors are used in rerailing operations. As no outside contractor was used in this case, no minimum applies." (Emphasis added.)

Thus, it is clear the Carrier asserts no contractor was used.

This factual dispute is easily resolved. One need look no further than the correspondence written in connection with the claim by local Carrier officials and the Carrier's highest designated officer to conclude that a contractor was in fact used. The AVP Division Manager stated in his response to the initial claim dated September 19, 1979 (Employees Exhibit C):

> "Since the contractor furnished no groundmen, we are required to furnish two, which we did in this case. The MIC used is the Carmen's craft and his duties involve rerailing."

The Carrier's letter of November 14, 1979 (Employees Exhibit F-1) made reference to the Carrier having used the "Berg Corporation" to assist in the rerailing of the cars in question.

In view of the actual facts involved, it is apparent this case is substantially similar to Second Division Award 9394. That case also involved a Mechanic-in-Charge performing duties at a derailment where a contractor was used. It was found in Award 9394 that the controlling language under such a factual situation was the March 1, 1976, Memorandum of Agreement relating to Rules 126 and 127. The Memorandum stated in part:

> "Item #2(a) - Provides that a minimum of two (2) carmen be on the scene of a derailment if contractor equipment is utilized and the carmen are reasonably accessible to the wreck. 'Reasonably accessible' is defined in Item 2(c)."

The Board after noting Item #2 (a) in Award 9394 went on to state the following:

> "Inasmuch as only one Carman was called and inasmuch as the language of the memorandum of Agreement is clear, in that it specifically provides that two Carmen are to be called when a Contractor is used, the Claim must be sustained.
>
> It should be noted, however, that this decision is premised on the use of a Contractor and has no bearing on the use of Mechanics-in-Charge for work away from their point of employment for work not involving Contractors."

This dispute will be resolved similarly. While other parts of the Agreement make references to Mechanics-in-Charge being able to perform mechanics work, in general more weight must be given to the specific language. Item 2 specifically and unequivocally provides that two "carmen" will be on the scene of a derailment when a contractor is used. This specific provision is viewed as an exception to the more general language. Thus, the claim must be sustained in principle.

There is a problem in respect to remedy. Item 2(a) provides a minimum of two. One carman was assigned to the derailment. The Carrier was obligated only to assign one more. However, there are two claimants. Therefore the parties are directed to meet and confer as to which of the two is entitled to the monetary award.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November 1983.