

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That Carrier violated the terms of the controlling Agreement, when on date of November 5, 1980, at New Castle Junction, PA, train crew was allowed to assist carmen in rerailing work; derailment occurring within yard limits at New Castle Junction, PA, in direct violation of Rule 142 of the controlling Agreement, as well as Rule 29.
2. That Carrier is in violation of Rule 33 of the controlling Agreement with regard to the instant claim.
3. That Carrier be ordered to compensate claimants as follows, account the above violation: Carmen D. Bass, S. T. Lavella, and A. V. Moser, each for call time, two (2) hours and forty (40) minutes, at the time and one-half rate of 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 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.

The United Transportation Union, a third party at interest, was advised of this dispute and made a response.

A derailment of one freight car occurred within the yard limits at New Castle Junction, Pa. on November 5, 1980. Two Carmen were on duty and were directed to attempt to rerail the car. The record shows that the four-employe Yard Crew assisted in this effort. Blocking and moving the car were unsuccessful in rerailing the car, and the work was completed on the following day by Carmen.

The Organization raises a procedural matter as to the initial claim response of the Carrier, which dealt principally with events on November 6. The Organization argues that the Carrier failed in its response to answer the claimed violation (use of the Yard Crew) on November 5 and thus the answer does not meet the requirements of Rule 33.

The Board does not agree. The response made some reference to the work performed by the "train crew" on November 5; reference to November 6 simply supplemented the Carrier's answer, which the Board finds sufficiently precise to meet the requirements of Rule 33.

The Organization argues that the Yard crew improperly assigned the two Carmen in violation of the second sentence of Rule 142, which rule reads as follows:

"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 will be called to perform the work."

Previous awards have addressed Rule 142 (or its identical language in other agreements with a different rule number). As in many such awards, the Board finds that the second sentence of Rule 142 is complete in itself and is not dependent on the first sentence. The rule is mandatory as to derailments "within yard limits". Under such circumstances, "sufficient Carmen will be called to perform the work". This does not permit the use of employees other than Carmen, provided of course that Carmen are available for the work. In this instance, there is no dispute to the Organization's contention that other Carmen were available.

Award No. 9116 concerns a similar rule. Although the first sentence of that rule is different than Rule 142 under consideration here, the operative second sentence is identical. Award No. 9116 states in pertinent part as follows:

"The Organization claims that the crew should have been initially assigned to perform the work, based in particular on Rule 103 (c), which reads in full as follows:

'(c) Within yard limits, when the wrecker is used, the necessary number of members of the wrecking crew will be called to perform the work. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work.'

Argument as to whether Carmen have exclusive jurisdiction of all rerailing work is not the pertinent issue here. As to the specific circumstances -- 'within yard limits' -- Rule 103 (c) is clear and unambiguous, directing the calling of Carmen for such work. (Other portions of Rule 103 are concerned with such work outside of yard limits.)

Award No. 8612 (McMurray), concerning the same parties, the same rule, and virtually the same circumstances, found the Organization's position correct. That Award in turn referred to Award No. 7607 (Lieberman), also involving the same parties and the same rule. The Board finds no basis to arrive at a different conclusion from that in the two cited awards."

In its response, the United Transportation Union points to rules governing arbitrary payments for employees represented by UTU who participate in rerailing work. Whatever circumstances may be governed by such arrangements, this is not a work classification rule which defeats Carmen's Rule 142.

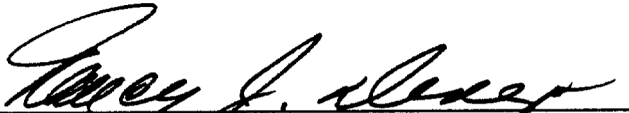
The Carrier argues that the Organization's claim of pay at the punitive rate is excessive. In keeping with the general principle of the Second Division in reference to pay for work not performed, the Board agrees with this view.

A W A R D

Claim sustained, but on the basis of pro rata pay only.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.