

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 10111
Docket No. 9898-T
2-SOO-CM-'84

The Second Division consisted of the regular members and in addition Referee Tedford E. Schoonover when award was rendered.

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

Dispute: Claim of Employees:

1. That under the current agreement, the Soo Line Railroad Company violated Rule 98 of Memorandum of Agreement of November 1, 1980 and Rule 10 of Shops Craft Agreement of January 1, 1954. That Carman E. Miller was denied compensation of pay, when on November 6, 1980, Machinist's Foreman R. Ethridge ordered two machinists to secure blocking and performed Carmen's work of rerailing Flatcar Soo 5477, that had one set of wheels derailed at 10:25 A.M. in the shops area, which is in the yard limits.
2. That accordingly, the Soo Line Railroad Company be ordered to pay Carman E. Miller, penalty time of one half hour at time and one half, Carman's rate of pay, for being denied the right to perform Carmen's work of rerailing.

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.

Rules 98 and 10 cited in support of the claim follow:

"WRECKING RULE 98 AGREEMENT OF NOVEMBER 1, 1980:

1. Wrecking crew will be composed of Carmen, including Engineer, will be assigned by bulletin, and will be paid under Rule 10.
2. When a wreck occurs outside yard limits, equipment designated by the Carrier will be used, and a sufficient number of the regularly assigned crew will be called to accompany such equipment.
3. In case of emergency, should the Carrier use the equipment of a contractor (with or without operators) a sufficient number of qualified Carmen will be used as follows:

(a) If a regularly assigned wrecking crew is located at a point nearest to the scene of the wreck, a sufficient number of the regularly assigned wrecking crew will be called to work with the contractor as groundmen. If, after the Carrier has assigned all its regularly assigned wrecking crew members and additional groundmen are needed, additional Carmen from any location determined by the Carrier, will be called and used as additional groundmen.

(b) If at the point nearest the scene of the wreck, the Carrier does not have a regularly assigned wrecking crew, but has Carmen employed, the Carrier may dispatch a sufficient number of qualified Carmen from that point in lieu of calling a wrecking crew. If a sufficient number of Carmen cannot be obtained for groundmen, consistent with service requirements, Carmen from other points will be used.

4. For wrecks or derailments within yard limits, a sufficient number of Carmen will be called to perform this work.
5. When the Carrier elects to call a contractor for any wreck, it is understood that the necessary wrecking crews and/or Carmen, as nearly as possible, will be called so as to arrive at the wreck at about the same time as the contractor's crews.
6. This rule shall not be construed to prevent train or engine crews from rerailing cars and/or locomotives with frogs and/or blocking which is immediately available to the train or engine crew...."

"EMERGENCY SERVICE ROAD: RULE 10, Pertinent parts.

Par. 1, An employee regularly assigned to work at a shop, enginehouse, repair track, or inspection point, when ordered for emergency road work away from such shop, enginehouse, repair track, or inspection point, will be paid from the time ordered to leave home station until his return for all time worked, in accordance with the practice at home station, and will be paid straight time rate for all time waiting or traveling.

Par. 2, Employees who are at work at home stations or called on rest days or holidays and who are sent out on line will be allowed time and one half for the regular assigned hours at home stations, whether working, waiting, or traveling.

* * *

Par. 5, Wrecking service employees will be paid under this rule, except that all time working, waiting, or traveling on rest days and holidays will be paid for a rate of time and one half, and all time working, waiting, or traveling, on assigned work days after the recognized straight time hours at home station will also be paid for at a rate of time and one half."

The Organization contends that the above rules require that Carmen are to be called for wrecks and derailments, the only exceptions being that in case of an emergency an outside contractor can be used. Also train and engine crews may rerailed cars with frogs or blocking if immediately available. The Carrier contends that no rule reserves rerailing within the shops to any particular craft.

The claim arose out of a situation on November 6, 1980, when a foreman and two machinists moved a flat car off the turntable with a trackmobile at the Shops Roundhouse in Fond du Lac. In the move, the left and right wheels of the fourth axle were derailed. The machinists put two blocks by the wheels, lined the table and pulled the car back on the rails. On the date of the claim, Claimant was assigned as a truck driver for emergency road work.

In view of the fact this dispute involves jurisdictional questions between the Organization and International Association of Machinists the latter Organization was notified of the claim before this Board and asked to submit a statement of position. The request was answered with the following statement:

"There is in effect an Agreement between the International Association of Machinists and Aerospace Workers on the one hand, and the Soo Line Railroad Company on the other hand, that stipulates the work of Machinists' Craft and protects our right to the performance of such work."

In denying the claim the Carrier stated:

"rerailing work of this nature is common. The rerailing work performed in this instance was minor and performed with the aid of blocking that was immediately available. In view of these circumstances, we find the Carrier did not violate the Carmen's Agreement by allowing machinists to perform the above noted work. The work was incidental to the machinists assignment."

The Carrier also noted that the rerailing did not require a wrecker and cited Award 1763, as follows which dealt with a claim wherein an engine derailed on a turntable was rerailed by roundhouse employees and machinists:

"The rule is, under such an agreement we have here in the absence of a specific rule to the contrary, that the rerailing of locomotives and cars is not called or needed."

Carrier objects to Organization's introduction of Rule 10 in support of the claim before this Board because reference to this rule was not used by the Organization in presentation of the dispute on the Carrier. There are many precedents supporting the point that handling of disputes before this Board is an appeals process and based exclusively on the record of the case as handled on the Carrier. Thus, while Rule 10 cannot properly be considered in reference to this case it should be noted that the rule deals with emergency road work and is not applicable in this situation in any case. Thus, we find the question to be moot and pass on to the merits of the claim.

The Organization has not supplied reference to any rule that specifically reserves to Carmen the work of rerailling cars within the roundhouse area. Rule 98 pertains to wrecks, wrecking crew, how they will be composed, when and under what circumstances they will be called, and generally gives wide latitude to the Carrier in determining these questions. There is no support for the argument that Carmen had an exclusive right to all rerailling work prior to Rule 98 and this fact was not changed by the language on the rule. We cannot agree that paragraph 4 requires that Carmen were required in a reraillment such as here involved in the roundhouse. There is a well established distinction between the narrow confines of work within the roundhouse area and the broad areas outside which are included in the term "yard limits".

The jurisdictional dispute over Carmen claims to the exclusive right to reraillment work has had a long history on this property. Paragraph 4 of Rule 98 is similar to the old rule. In denying claims of this kind under the old rule the Carrier stated in 1962 that:

"... I would like to point out that the Second Division has many times held that the rerailling of cars is not exclusively reserved to carmen and others may assist in the rerailling of cars whether on the road or in a yard when it can be done without the aid of wrecking service. See Awards 425, 1322, 1482, 1757, 2049, 2208, 2343, 3257, and 3265."

For many years following that denial such claims were not pressed until 1979, when a claim was presented in which the switch crew rerailled two cars. In that case the Carrier denial stated:

"As we iterated before, it is common practice for switch crews to reraill cars that do not require jacking. We could not grant to you exclusive right to this work without the concurrence of the other Organizations."

It appears from the Carrier submission that the long series of claims resulted in clarifying language in paragraph 6 of the 1980 agreement noted above. Such language, in permitting train or engine crews to reraill cars with frogs or blocking immediately available, must be interpreted as being limited in its application to those particular employes in those narrowly defined conditions. The language does not refer to other reraillments or other situations in roundhouse areas. There are no precedents or practices giving Carmen exclusive jurisdiction over the rerailling work in routine situations as here involved where the car was rerailled by the simple use of blocks. Derailments are common within the shop and yard areas and have been the subject of many Board Awards. Action on such claims is well summarized in Second Division Award No. 5860 as follows:

"With respect to the question of exclusivity of work, the awards of the Division have held almost uniformly that unless a wrecking crew was called for wrecks or derailments, such work does not belong exclusively to carmen. See Awards 3257, 3265, 3859, 4337, 4362, and 4901."

There is the final point that rerailing within the roundhouse area is also claimed by the machinists as incidental to their roundhouse work. The statement by the International Association of Machinists and Aerospace Workers definitely asserts jurisdiction over the work in question and thus we must recognize the Board's longstanding practice of dismissing claims where jurisdictional disputes exist. Thus, we note Award 7255 as follows:

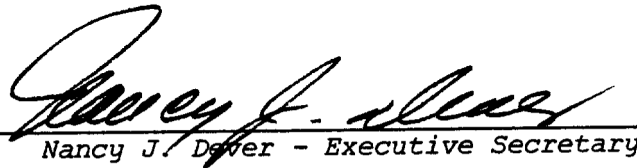
"There are a host of recent Awards by this Division attesting to the fact that this Board, under the circumstances described above, does not assume jurisdiction over disputes between Organizations and we are therefore constrained to dismiss the claim. See Second Division Awards 7092, 7059, 7058, 6872, 6848, 6825 and many others."

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October 1984.