

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

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

Dispute: Claim of Employees:

1. Claim: That regular assigned wrecking crew members, Carmen, J. R. Reynolds, Sr., T. J. Carter and R. S. Hicks, Jr.'s service rights and rules of the controlling agreement were violated on March 29, 1981 account other than Carmen (Trainmen) did rerail Car C&O 60615 in violation of Carmen's Special Rules 157 and 158.
2. Accordingly, Reynolds, Sr., Carter and Hicks, Jr. are each entitled to be additionally compensated two (2) hours and forty (40) minutes at Carmen's applicable time and one-half (1 1/2) rate in lieu of said violation.

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.

This case involves the following facts and circumstances. On date of March 29, 1981, at Carrier's transportation yard at Newport News, Virginia, Car No. 60165 derailed to the extent of having the wheels at one end of the car off the tracks. The train crew apparently acting without instructions from Management were successful in rerailling the car by putting wooden blocks in front of the wheels and pulling it back on the tracks using the power of the engine.

Carmen's Rules 157 and 158 read in pertinent part:

"Rule 157

(a) Regularly assigned wrecking crews, not including engineers, will be composed of carmen, where sufficient men are available, and will be paid for such service under Rule 10. Meals and lodging will be provided by the Company while crews are on duty in wrecking service.

"(b) When needed, men of any class may be taken as additional members of the wrecking crews to perform duties consistent with their classification."

"Rule 158

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."

The Employees contend that it was a violation of the above cited rules to allow trainmen to rerail this car as no carmen were called to perform the work. They allege that the time involved was one hour and forty-four minutes.

The Carrier contends that they had no knowledge of the derailment prior to the time it was rerailed. That this was a minor derailment that did not require the use of tool cars or the assistance of anyone to put the car back on the tracks. That the train crews using a simple blocking operation had rerailed the car using the train's own power, and that this had been done countless times before on this property. They further contend that had management been informed of the derailment prior to the rerailing that there were sufficient carmen on duty to perform the work but because of its minor nature there was no need to call anyone and that under no circumstances would the Claimants have been called and used on this work on an overtime basis. Carrier also states that the time involved was approximately 1 1/2 hours. Both sides cite various awards in support of their positions.

In considering these contentions and all of the facts of the case we find that the last sentence in Rule 158 must govern as it pertains to wrecks and derailments in the yards. We do not find that wrecking crew members must be called in such instance, but only that sufficient carmen must be called. Also we do not find that overtime must be paid except during overtime hours as Rule 158 makes no mention of overtime. We find no mention of "minor derailments" in the agreement nor any exceptions for such alleged "minor derailments" and this Board cannot, through the medium of an award, write something into the agreement which is not there. We must disregard any reference to so called minor derailments. We also find that the hours claimed by the Employees is exorbitant as by their own statement three trainmen plus the engineer rerailed the car between 11:00 a.m. and 12:44 p.m. Carrier claims the time to be approximately 1 1/2 hours which is close to that claimed by the Employees.

Having found that Rule 158 must govern and in accord with the other facts shown in the Findings we will sustain the case to the extent of the actual time apparently worked by the trainmen, which is one hour and forty-four minutes to be allowed each of the three Claimants at the straight time rate.

Form 1
Page 3

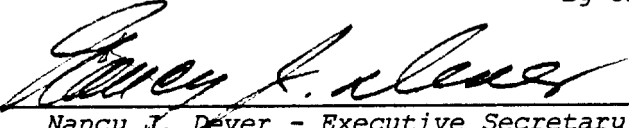
Award No. 10137
Docket No. 10003-T
2-C&O-CM-'84

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 31st day of October 1984.