

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  
( Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

- No. 1. That Carrier violated the Rules of the controlling Agreement, when on the date of August 5, 1981, they failed to adhere to the provisions set forth in Rules 141 and 142, and allowed other than available carmen, to perform the work of rerailing, derailed Caboose 3928, within yard limits at Willard, Ohio.
- No. 2. That accordingly, Carrier be ordered to compensate Claimants for all losses incurred account this arbitrary maneuver and direct violation of Claimants agreement, as follows: Carmen, C. Bittner and C. Tackett, Willard, Ohio, each two hours and forty minutes, (2 Hrs and 40 Min) pay at the time and one half 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.

Carrier maintains a switching and hump yard at Willard, Ohio. On date of August 5, 1981, one of Carrier's train crews derailed a caboose while working within the yard limits. The train crew with the assistance of an assistant trainmaster and by using blocks and wedges rerailed the caboose using the power of the locomotive to pull the caboose back on the tracks. Carmen were on duty at the time but none were called to assist in this rerailment.

Rules 141 and 142 read as follows:

"Rule 141

Wrecking Crews

Regularly assigned wrecking crews will be composed of carmen, where sufficient men are available, and will be paid for such service under Rule 7. Meals and lodging will be provided by the Company while crews are on duty in wrecking service.

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

"Rule 142

Make-up of Wrecking Crews.

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 when the caboose was rerailed without any carmen being called that this was a violation of Rules 141 and 142.

The Carrier contends that there was no violation of the rules, that the Employees have failed to prove exclusive rights to perform this work and that the claim is excessive and not supported by agreement rules. Carrier has however, offered to settle the claim by payment of one hour's compensation to one of the Claimants, an offer which the Employees call totally unacceptable. Both sides cite numerous awards in support of their positions.

Rule 141 pertains to the composition of the wrecking crews, the rule under which they will be compensated and the fact that while on duty in wrecking service they will be provided with meals and lodging, it pertains to nothing else. Rule 141 is clearly not applicable to this case.

Since this derailment took place within the yard limits only the last sentence of Rule 142 is applicable as reads:

"For wrecks or derailments within the yard limits sufficient carmen will be called to perform the work."

There is no exception in the above quoted rule, therefore when the assistant trainmaster assisted in rerailing this caboose either by orders or otherwise it was a violation of Rule 142. The Carrier claims that it took approximately one hour to reraile this caboose and this has not been denied by the Employees. We shall sustain this case to the extent of one hour's compensation to be paid to each of the two Claimants at the straight time rate.

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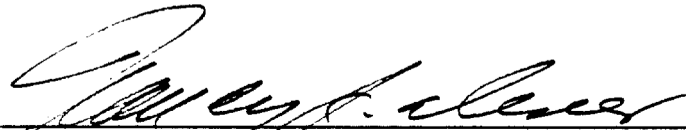
Award No. 10142  
Docket No. 10038-T  
2-B&O-CM-'84

A W A R D

Claim sustained to the extent shown in 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.