

The Second Division consisted of the regular members and in addition Referee T. Page Sharp 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 Rules 10, 27, 28, of the Shops Craft agreement and Rule 98 of November 1, 1980 agreement, when the Soo Line Railroad Co. ordered and allowed a yardmaster and two Section men to perform carmen's work, to rerail Freight Car, G.B.W. 16110, which was derailed at Allenton, Wisconsin, on December 6, 1981.

2. That accordingly, the Soo Line R. R. Co. be ordered to pay carmen Dwayne Rymer, Gerald Mand and Ben Rentmeister, five and one half hours, each at time and one half carmen's rate of pay, for loss of compensated pay under Rule 10, when the Soo Line Railroad Co. failed to call the aforementioned carmen, who had their names shown on the emergency road service block, at N. Fond du Lac Shops, for rerailing service.

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 December 6, 1981 an automobile struck a Carrier train. After the automobile had been cleared, it was discovered that one pair of wheels were off the track on one of the cars. After they had waited for some time, the train crew was informed by two Section Men that no Carmen were called. Shortly thereafter a Roadmaster arrived with the same message.

The Section Men and the Roadmaster placed rerailing equipment and the train crew pulled the car back onto the track. This led to the filing of the Claim with the Claimants stating that their work had been performed by others.

Both the Claimants and the Carrier reference Rules 98 and 28 as pertinent to resolution of the Claims. These Rules state:

Rule 98

1. Wrecking crews 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 a 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 rerailling cars and/or locomotives with frogs and/or blocking which is immediately available to the train or engine crew.

7. Meals and lodging will be provided by the Carrier while crews are on duty in wrecking service.

8. When needed, employees of any class and craft may be taken as additional members of wrecking crews to perform duties consistent with their classification of work.

Rule 28

1. None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed.

2. This rule does not prohibit foremen in the exercise of their duties to perform work.

3. When the service requirements do not justify the employment of a mechanic in each craft, the mechanic or mechanic on duty will, so far as they are capable, perform the work of any other craft that may be necessary. In the event a question arises as to the practical application of this rule, a joint check shall be made when so requested by the General Chairman.

Many previous awards establishing that rerailling work was not exclusive to the Carmen were cited by the Carrier. These awards predated the 1980 agreement and are not useful in ascertaining the intent of the parties in the making of that agreement. However, the Board was furnished one award which directly interpreted that agreement. This is Second Division Award No. 10111, Referee Schoonover. That Award by its own terms is limited to rerailling cars within the roundhouse area and is not on point.

There is some argument that this was not a wreck. The Carrier states in its Submission "Specifically, it is the position of the Carrier that one pair of wheels on the ground does not constitute wrecking work within the meaning of Rule 98." However, an automobile ran into the train and derailed one of the cars. Such a situation must fall within the definition of a wreck. Moreover, although the agreement is entitled "Wrecking Rule 98", the language of provision 3(a) states "For wrecks or derailment..." There can be no dispute that this was a derailment.

The argument is made that this is not an agreement that gives the right to rerailling work to the Carmen craft. While there is no language that specifically states that the work is so reserved, the inclusion of Section 6 leads to no other conclusion. That section is an exclusionary section from the agreement. If the agreement is not exclusive to the Carmen, the drafters would have had no purpose of specifically excluding train and engine crews under limited circumstances from its scope. If the agreement is to be interpreted as the Carrier contends with the Section Men able to utilize frogs to aid in the rerailling, obviously the train and engine crews would be equally free to utilize frogs in rerailling. If this interpretation be accepted, the exclusion of train and engine crews by Section 6 is superfluous. There is long held axiom in contract interpretation that no provision of an agreement is deemed to be superfluous.

Read as a whole, the agreement is only consistent when it is assumed that the wrecking work described in the agreement is the province of the Carmen, but under limited circumstances the train and engine crew are allowed to perform this same work.

Based upon this interpretation of the agreement, we find that the work belonged to the Carmen and will sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1985.