

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Houston Belt and Terminal Railroad Company

Dispute: Claim of Employees:

1. That the Houston Belt and Terminal Railroad Company violated Rule 23 (a) and Rule 111 of the controlling Agreement March 5, 1983 at Houston, Texas when officers were used to rerail ATSF Diesel No. 2224.
2. That the Houston Belt and Terminal Railroad Company be ordered to compensate Carman D. Searcy in the amount of four (4) hours at the pro rata rate account this 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.

The Claimant is employed by the Carrier as a Carman at its facility located in Houston, Texas.

On March 5, 1983, ATSF Diesel 2224 derailed within the Carrier's mechanical facilities and near its Diesel Shop. Both the offices of Mechanical Superintendent, J. W. McCaddon, and Diesel Shop Foreman Jim Brose are located at the Diesel Shop, and they were informed of the derailment. They investigated the incident and after finding two (2) wheels derailed, they placed blocks and wedges on the ground. With the assistance of a hostler, they re-railed the engine, approximately fifteen (15) minutes after it had been derailed. In failing to call the Claimant to perform the work, the Organization contends that the Carrier violated Rule 115 of the Agreement which provides as follows:

"Rule 115. When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crews will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen and helpers will be called to perform the work, if available."

The Board finds that on March 5, 1983, the Carrier violated Rule 115 by failing to call Carmen to perform the work in question. Little would be gained by attempting to analyze the decisions from various properties dealing with the same or similar language contained in Rule 15. Beyond revealing that other Carriers and Organizations have presented similar arguments, the cases are not uniform in theoretical argument or ultimate decision. However, it is the Board's conclusion that the view most consistent with the intent and meaning of Rule 15 is provided in Second Division Award No. 4674. Except for the last two (2) words "if available", the same language of Rule 115 was at issue in Award No. 4674. As in this Award, the first sentence of Rule 115 starts with "when", an adverb which introduces an "adverbial time clause" rather than a conditional clause. Accordingly, as used in the first sentence of Rule 115, "when" indicates or acknowledges that a certain situation will necessarily arise and when it does, the procedure set forth is to be followed. This is to be contrasted with the conjunction "if" which is used to indicate a condition that may or may not occur. This Board then declared in Award No. 4674:

"It is our interpretation that the first sentence of Rule 138 gives the Carrier the right to use or not to use a wrecking crew 'outside of yard limits'. The second sentence of that Rule, however, is not dependent on the first sentence for its meaning and purpose, because not only are the sentence structures different but also the conditions and requirements of each sentence are different. We do not believe that the second sentence gives the Carrier the choice of using or not using a sufficient number of carmen 'for wrecks or derailments within yard limits'. Accordingly, we believe the Carrier's action violated the controlling Labor Agreement."

In following the reasoning set forth in Award No. 4674, it does not mean that Carmen have the exclusive right to re-rail engines and cars, which, parenthetically, is not the issue to be resolved in this case. See Second Division Award No. 9116. However, it is to be underscored that Rule 115 is clear and unequivocal about the circumstances which requires the calling of "sufficient carmen and helpers" to perform the work, namely, "within yard limits".

The derailment that occurred on March 5, 1983 may be considered "minor". In fact, the re-railing required merely fifteen (15) minutes. Notwithstanding this consideration, the second sentence of Rule 115 which is separate and apart from the circumstances and conditions contained in the first sentence, does not provide an exception for "minor" wrecks or derailments.

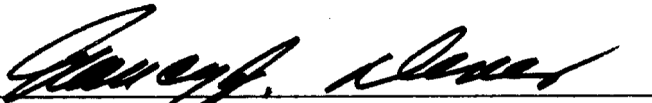
There is no dispute between the parties on the Claimant's availability on March 5, 1983 to perform the work. Thus, since the derailment occurred "within yard limits", the Carrier was required to call the Claimant to perform the work.

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.