Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10753
SECOND DIVISION Docket No. 10437
2-SOO-CM-'86

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

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

Dispute: Claim of Employes:

1. That under the current agreement the Soo Line Railroad Company violated Rules 10, Paragraph 5 and 27 of the Shops Craft Agreement and Rule 98 of November 1, 1980 Agreement, when the Soo Line Railroad Company did not call or allow a sufficient number of the assigned Shoreham Shops, Minnesota wrecking crew members to accompany the Carrier's equipment, which consisted of the wrecker crane and outfit cars on July 14 and 15, 1982 to the derailment site at Ironwood, Michigan.

2. That accordingly, the Soo Line Railroad Company be ordered to additionally compensate wrecking crew members Carmen R. Butorac, O. Lanske, D. Neumann, J. Coldren and M. Sjoberg for loss of compensation of pay of 19 hours each at time and one-half at carmen's rate of pay when not allowed to accompany the Soo Line Wrecker and equipment when it departed from the Shoreham Shops at 9:00 p.m. July 14, 1982. Instead they were transported by Van truck to derailment site at 12:01 a.m. on July 16, 1982.

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 Claimants are wrecking crew Carmen who are employed by the Carrier at its Shoreham Shops, located in Minneapolis.

On July 14, 1982, Train No. 40 derailed Units Nos. 4430 and 4438 and two (2) cars when it came upon a washed out culvert near Thomaston, Michigan. Later that day the wrecker and diner were dispatched on Train No. 910 to the derailment site at Ironwood, Michigan accompanied by Wrecker Foreman Erickson and Wrecker Engineer Granville. On July 16, the Claimants were called upon to travel to the derailment site by van. They completed the rerailing of the second unit on July 21 at which time the wrecker and the crew were released to the Carrier's Shoreham Shops.

The instant claims allege, among other things, that the Carrier violated Rule 98, Paragraph 2 because it failed to call or permit a sufficient number of the wrecking crew members on July 14 and 15, 1982 to accompany the Carrier's equipment consisting of the wrecker crane and outfit cars to the derailment site at Ironwood, Michigan.

Rule 98, Paragraph 2 provides as follows:

> "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."

The Carrier contends that the "sufficient number" requirement of Rule 98 was met because the Claimants were called to "accompany designated equipment to the wreck site." Furthermore, the Carrier contends that the instant claim is an attempt to retain Agreement provisions present in the former Rule 98, which are not present in Rule 98 as revised, effective November 1, 1980."

The record does not support the position of the Carrier. Prior to November 1, 1980, Rule 98, Paragraph 2 stated:

> "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."

The only substantive revisions to Paragraph 2 that became effective November 1, 1980, are that the "equipment designated by the Carrier will be used", and that "a sufficient number of the regularly assigned crew will be called to accompany such equipment" in lieu of being called to "accompany the outfit."

Language similar to the terms of Paragraph 2 has been interpreted and given meaning in Second Division Awards 4564, 5584, 5678, 7787 and 8402. These Awards support the instant claim. For example in Award 4654, Rule 88 provided, in relevant part, as follows:

> "*** When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit."

Award No. 4564 involved a wrecking crew which left Minneapolis, at 4:00 p.m. on October 2, 1960 without the Claimants who were dispatched subsequently by private automobile on October 4, 1960 to the site of the derailment. In the last paragraph of the Award, the Board concluded its findings with the following statement:

> "The Board, in Award 5678 sustained a claim that the Carrier had failed to permit Claimants to accompany the wrecking outfit while in transit to and from the scene of derailment outside of yard limits, citing 'The overwhelming number of awards sustaining the Organization's contention in this case....' We are inclined to follow the Board's reasoning in this and similar cases and, therefore, we will sustain the claim."

In Award No. 8402, the claim concerned certain members of a relief outfit crew who returned to their home yard ahead of the crane assigned to their relief outfit. The claim requested compensation until such time as the crane returned to their home yard. The language in dispute, Rule 111(b), provided:

> "When relief outfit is called for derailments or accidents outside of yard limits at home point, the regular assigned crew, if available, will accompany the outfit."

This Board in Award 8402 referred to Rule 88 in Award No. 5678, which is the same Rule 88 that was in dispute in Award No. 4564 and concluded:

> "The Board, in Award 5678 sustained a claim that the Carrier had failed to permit Claimants to accompany the wrecking outfit while in transit to and from the scene of derailment outside of yard limits, citing 'The overwhelming number of awards sustaining the Organization's contention in this case, ...' We are inclined to follow the Board's reasoning in this and similar cases and, therefore, we will sustain the claim."

The negotiating history behind the revisions to Paragraph 2 reinforces the conclusion that the claims should be sustained. In seeking to alter the terms of Rule 98, Paragraph 2, on January 25, 1980, the Carrier submitted the following proposal to the Organization:

> "2. When a wreck or derailment occurs outside yard limits, equipment designated by the Carrier will be used and a sufficient number of the regularly assigned wrecking crew will be used. It will not be necessary for all or any portion of the regular wrecking crew to accompany the designated equipment to the scene of the wreck or derailment and/or return if other suitable means of transportation is available, and desired by management."

The Organization rejected the Carrier's proposal. To sustain the instant claim would give the language of Paragraph 2, effective November 1, 1980, the meaning that would have been given to the language of the Carrier's proposal that it was unable to successfully negotiate into the Agreement. Such a result would be inconsistent with the meaning and understanding that the parties intended to give to Rule 98, Paragraph 2.

Based upon the record and persuaded by the reasoning of the Awards that have involved language similar to the terms of Rule 98, Paragraph 2, we have concluded that two (2) Carmen were not a sufficient number of the regularly assigned crew that were called to accompany the Carrier's equipment consisting of the wrecker crane and outfit cars. By calling upon the Claimants or remainder of the wrecking crew, to go to the derailment site on July 16, 1982, the Board concludes that the full wrecking crew was required to accompany the Carrier's equipment.

Furthermore, the wrecker crane and outfit cars were "equipment designated by the Carrier" within the scope and meaning of Rule 98, Paragraph 2. The Van truck that was used for the sole purpose of transporting the crew on July 16 had no role in the performance of the wrecking work. Thus, the Van truck cannot be considered "equipment designated by the Carrier" as provided in Paragraph 2.

As a final matter to be considered the Carrier indicates that the Claimants worked at least eight (8) hours on July 14 and 15, 1982. A careful examination of the record discloses that this contention was not made on the property. As a result, it cannot be considered by the Board.

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 26th day of February 1986.