

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Galveston, Houston and Henderson Railroad

Dispute: Claim of Employees:

1. That the Galveston, Houston and Henderson Railroad Company violated Rule 63 of the controlling Agreement July 29, 1983 when they used other than Carmen to rerail freight car MP 55227 at roundhouse lead.

2. That the Galveston, Houston and Henderson Railroad Company be ordered to compensate Carman J. Horvath in the amount of two (2) hours and forty (40) minutes at the rate of \$12.93, account of their 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 employee or employees involved in this dispute are respectively carrier and employees 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 July 29, 1983, Freight Car MP 55227 was derailed on the Carrier's roundhouse lead. Maintenance of Way employees were assigned to rerail the freight car. The Organization claims this assignment violated Rule 63 which reads:

"For wrecks or derailments within yard limits or on line, sufficient carmen and helpers will be called to perform the work, if available."

The Carrier contends the work in question has been performed exclusively by employees represented by the Brotherhood of Maintenance of Way Employees for many years. It is acknowledged by the Carrier that Rule 63 has been in the Controlling Agreement since September 1, 1949. The Carrier asserts the Organization did not want the work and has not protested or filed a claim over the use of Maintenance of Way employees. Additional arguments concerning equipment and the full employment of Carmen on duty were advanced by the Carrier.

Unlike the cases referred to by the Carrier in its Submission, there is no evidence the Maintenance of Way employees utilized in this case were assisting any other call of employees. Herein, the Carrier defends its assignment on the grounds of exclusive practice, not Agreement language.

This Board cannot ignore long established interpretive procedures relating to contract language. Herein, the language of Rule 63 could not be stated more succinctly. It clearly and unambiguously states the intent of the parties. Historical practice, regardless of its duration, is relied upon only when the intent of the parties is expressed in uncertain, ambiguous language. Nevertheless, there is no probative evidence of record to establish the necessity of calling any additional Carmen not already on duty.

The Carrier is now placed on notice that the Organization intends to enforce Rule 63. If, in the past, assignments were made by the Carrier which ignored the plain and concise language of Rule 63, it was imperative for the Organization to raise that issue. Accordingly, the Carrier is now forewarned that future assignments which are contrary to Rule 63 may have substantial economic impact.

A W A R D

Claim sustained in part 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 10th day of September 1986.