

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Carman Leslie Leytham, Council Bluffs, Iowa was deprived of work and wages to which he was entitled when the Chicago and North Western Transportation Company violated the controlling agreement on November 9, 1989 at a derailment at Council Bluffs, Iowa when the Carrier failed to call and utilize him as a groundman and assist in the rerailling of UP 71701 and CNW 470785.

2. Accordingly, Leslie Leytham is entitled to be compensated in the amount of three (3) hours pay at the overtime rate, plus wrecking incentive pay at 25¢ per hour, amounting to a total of \$64.11.

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 were given due notice of hearing thereon.

The basic facts of this case are set forth as follows: On November 9, 1989 Carrier utilized a Cline Rerailling Truck to reraill two (2) cars (UP 71701 and CNW 470785) in the Council Bluffs, Iowa departure yard. A Cline truck operator and a groundman was used to perform said work which took about three hours. Since the groundman was not an assigned member of the Council Bluffs wrecking crew, the Organization charged his assignment violated Rules 14, 30, 58 and 60 of the Controlling Agreement. Specifically, the Organization maintains that when a derailment occurs which requires the use of a wrecking derrick or a suitable substitute, Carrier is obligated to use a regularly assigned wrecking crew groundman. It contends in this connection that the Cline truck is a crane which has only one purpose, and that is to

rerail freight and passenger cars as well as units with a lifting capacity of 85 tons. Since the Cline truck was used as a wrecking derrick on November 9, 1989, the Organization asserts that Claimant and not the extra man should have been called to perform wrecking service. It cites Second Division Award 11905 as controlling authority.

Contrawise, Carrier contends that the derailment was minor in nature and did not require the utilization of the wrecking derrick or an outside contractor. It took three hours for the rerailing work to be completed. It does not dispute the Organization's contention that when a wrecking derrick is used all or part of the assigned wreck crew will be called, but it strongly disputes the Organization's position that a Cline truck is equivalent to a wrecking derrick. It also asserts that the type of equipment used does not determine whether a derailment is major or minor. It argues that since it is not precluded under Rule 60 from using other employees to pick up or clear minor derailments when a wrecking derrick is not needed, its actions on the claimed date were consistent with the pertinent rules of the Controlling Agreement.

In considering this case, the Board concurs with Carrier's position. Firstly, we cannot determine with any degree of substantive precision whether the derailment was actually major or minor. Secondly, it would not be impermissible if it were a minor derailment for Carrier to use equipment other than a wrecking derrick. The applicable language of Rule 60 reads:

"This does not preclude using other employees to pick up or clear minor derailments when wrecking derrick is not needed."

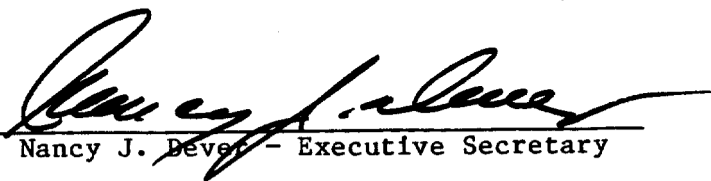
Since this very specific language presupposes that a wrecking derrick will not be used to pick up or clear minor derailments, the litmus test under Rule 60 as to whether a wrecking derrick is needed is the actual nature of the derailment. In the case herein, we cannot conclude that a major derailment was present, and accordingly, we are constrained to deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of August 1992.