

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
(Southern Railway Company

STATEMENT OF CLAIM:

1. That the Southern Railway Company violated the terms and conditions of the controlling Agreement, specifically Rules 9 and 49, when they relieved Carmen A. Lucas and J. W. Richard of their assignment on the rewheel truck at a derailment site at Toddville, Georgia on December 2, 1989 at approximately 4:30 p.m.

2. That accordingly, the Southern Railway Company now be ordered to provide relief by now paying Carmen A. Lucas and J. W. Richard nine and one-half (9 1/2) hours of pay at the overtime rate, plus one (1) hours' pay at the pro rata rate of pay.

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.

Claimants charge that Carrier violated the Controlling Agreement, particularly Rules 9 and 49 when Carrier relieved them of duties at a derailed situs. Specifically, what occurred was that on December 2, 1989, when Claimants were assigned to a rewheel truck operating as a road truck out of Carrier's Macon, Georgia facility and were repairing two bad order cars at the Buckeye Cellulose Plant, they were informed by the Macon Chief Dispatcher at about 12:45 P.M. that their services were needed at a derailment located at McIntire, Georgia. They began their tour of duty at 7:00 A.M. However, at about 1:30 P.M., when the Chief Dispatcher called again, he instructed them to proceed instead to a 14 car derailment at Toddville, Georgia. In the meantime, two Carmen were sent at about 12:30 P.M. from the Macon Repair Shop to the Toddville situs. These two Carmen were later advised by the General

Foreman in charge that the rewheel truck was enroute, and they were offered the option either to remain at the site and work or return to the Macon Shop. They opted to return to the Shop. Claimants arrived at the derailment site at approximately 2:45 P.M. and were told to standby; a set of engines had been called to pull part of the derailment cars back on the track. At about 4:00 P.M. when the Macon Derrick Crew arrived and began working with a Contractor's Mobile Crane pursuant to Article VII of the Wrecking Service Agreement, the crane was used to rerail four cars. Claimants were relieved of their duties at 4:30 P.M. and were sent back to the Macon Shop in a storehouse truck. They had been at the site about one and one-half hours. Eight cars were rerailed by use of blocks, wedges, replacers, tools and equipment from the Macon re-wheel truck and the McIntire switching engines.

Based on the aforesaid, Claimants contend that since they were called prior to the carmen who elected to return to the Macon Shop, Carrier violated Rule 9. In effect, unlike the other two Carmen who were offered the opportunity to work, they were not provided this option, but directed to return to the Macon Shop in a storehouse truck. They could have assisted in rerailing the eight cars. Moreover, they also asserted that Carrier discriminated against them in violation of Rule 49.

Rules 9 and 49 are referenced as follows:

"ROAD WORK - OVERTIME

Rule 9. An employee regularly assigned to work at a shop, engine house, repair track, or inspection point, when called for emergency road work away from such shop, engine house, repair track or inspection point, will be paid from the time ordered to leave home station until his return for all time worked in accordance with the practice at home station, and also straight time rates for straight time hours, and time and one-half rates for overtime hours, whether working, waiting, or traveling.

If, during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief time will not be paid for, provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, during which such irregular service prevents the employee from making his regular daily hours at home station. Where meals and lodging are not provided by the Company, actual necessary expenses will be allowed.

Employees will be called as nearly as possible one hour before leaving time, and on their return will deliver tools at point designated.

If required to leave home station during overtime hours, they will be allowed one hour preparatory time at straight time rate.

Wrecking service employees will be paid in accordance with Agreement dated December 11, 1974 reproduced beginning on Page 89 of this Agreement.

NOTE: No double time to be paid for road work or wrecking service.

DISCRIMINATION

Rule 49. (a) It is the policy of Carrier and Organizations parties hereto, that the provisions of this agreement be applied to all employees covered by said agreement without regard to race, creed, color, age, sex, or national origin.

(b) Carriers will not discriminate against any committeeman who, from time to time, represent other employees, and will grant them leave of absence and free transportation where rail transportation is available on the property when delegated to represent other employees."

Carrier maintains that the two Carmen dispatched from the repair track were to be used until the wheel truck and/or derrick crew arrived. It notes that about 2:30 P.M. when Claimants apprised the General Foreman via radio contact, they were near the derailment, the other two Carmen were offered the opportunity to remain and work. This was related to the eight cars that could possibly be pulled on. The General Foreman also believed that an engine would be coming soon to make a pull and thus he instructed Claimants to standby. When the derrick crew began arriving at about 4:00 P.M. along with the Contractor's equipment and operator, Carrier points out, it relieved Claimants, since they were not members of the wrecking crew and lacked contractual rights to the work under Article VII of the Wrecking Service Agreement. It argues that it has the prerogative to assign Carmen in the General forces to perform road service on an as-needed basis consistent with the requirements of the service. It also disputes Claimants assertions that Rules 9 and 49 were violated. It contends there are no provisions in either rule that alter or supercede Article VII of the Wrecking Service Agreement nor any wording that gives any employee or employee group the exclusive right of use of any of Carrier's road trucks.

In considering this dispute, the Board concurs with Carrier's position. We have carefully reviewed the language of Rule 9 to determine whether Carrier's actions violated this Rule, but we cannot conclude that said Rule was breached. Rule 9 provides the compensatory arrangements when an employee regularly assigned to work at a shop, engine house, repair track or inspection

point is called for emergency road work, but it does not provide work guarantees at the emergency road work situs. It also does not qualify the specific requirements of Article VII of the Wrecking Service Agreement.

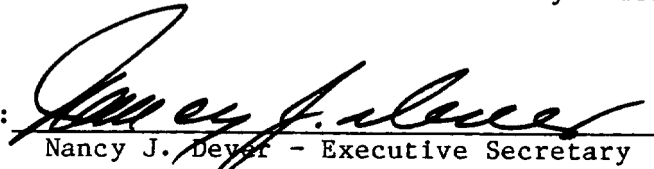
Similarly, we have carefully analyzed the on-situs appeals record, particularly, the chronology of events and the time specific actions of the involved parties but likewise we cannot conclude Rule 49 was violated. For example, there were no indications that the General Foreman in charge uttered discriminatory remarks or acted in a manner that was palpably inconsistent with this rule. There were also no indications that an asserted practice of discrimination was followed under similar work situations. The record was bereft of such needed evidence.

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 12th day of August 1992.