

Award No. 1936
Docket No. 1774
2-AT&SF-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT A. F. of L. (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—EASTERN LINES**

DISPUTE: CLAIM OF EMPLOYEES: 1) That under the current agreement other than Carmen were improperly used to rerail cars AT&SF Nos. 77295, 77437, 86777, 86523, 86716, 77271, 77627, 86433, 88169, 77189, 77431, 77207, 77294, Soo Line 42786, Erie 97370, IC 15765, IC 28496, C&O 7173, PM 89366, B&O 291049, PRR 440117 and Engine Tender No. 3214 on September 2, 1953, at the Marceline, Missouri Yard.

2) That accordingly the Carrier be ordered to additionally compensate Carmen designated by the Organization the amount of time equal to that which other than Carmen performed on September 2, 1953, at the applicable rate of pay.

EMPLOYEES' STATEMENT OF FACTS: On September 1, 1953, the Fort Madison, Iowa, wrecking crew was called to accompany the wrecking outfit to Marceline, Missouri, to rerail Cars AT&SF Nos. 77295, 77437, 86777, 86523, 86716, 86556, 77271, 77627, 88169, 77189, 77431, 77207, 77294, 86433, Soo Line 42786, Erie 97370, IC 15765, IC 28496, PM 89366, C&O 7173, B&O 291049, PRR 440117 and Engine Tender No. 3214, derailed in the Marceline, Missouri Yards. The wrecking crew reported, after which the call received by the wrecking crew was cancelled, the crew released and returned to their homes.

On September 2, 1953, the carrier decided that the above number of cars and tender could be rerailed without the aid of the wrecking derrick. Accordingly, the rerailment of the equipment was so handled with the following employees:

"Name	Occupation	Name	Occupation
Paul Cardray	Section Foreman	O. J. Farcaj	Section Laborer
D. Gerra	" Laborer	W. J. Level	" "
J. L. Whisenand	" "	P. Harden	" "
I. Duran	" "	A. Strayhas	" "
I. O. Lake	" "	J. B. Fuda	" "
H. B. Black	" "		

and apparently it was clear to the Board at that time, that carmen do not have a monopoly, by agreement or otherwise, to all wrecking service.

In instances where it is possible to rerail engines or cars by the use of rerailing frogs, blocks and jacks, it has always been the practice on this carrier at any point, whether on main tracks, yard tracks, in shop yards or in enginehouse territory, to perform this work by various classes of employes, viz., trainmen, enginemen, carmen, trackmen, shop forces, etc.

It is the position of the carrier that the applicable agreement on its face or as interpreted by the parties thereto never has and does not now contain any provision which guarantees to carmen the exclusive right to the performance of work in connection with minor derailments when the wrecking outfit is not used.

Since the applicable agreement was not violated when employes other than carmen were used to assist in the rerailment of equipment September 2, 1953, at Marceline, Missouri, the claim is without merit, lacks agreement support, and should be denied. To do otherwise would require the Board to disregard the agreement between the parties and impose upon the carrier conditions and obligations not agreed upon by the parties to the applicable agreement, which the Board is without jurisdiction or authority to do.

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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

Twenty-two cars were derailed within the yard limits at Marceline, Missouri. The wrecking crew at Shopton, Iowa, was called but later the call was cancelled and the crew released and paid for the call. The cars were then rerailed by two of the Marceline carmen and ten track laborers using jacks, frogs and other equipment, with a yard engine making the pulls.

The claim before us was made to require carrier "to additionally compensate carmen designated by the Organization."

Carrier asserts that the claim concerns the rights of shopmen at Shopton but makes no objection to failure of the Organization to name the claimants in whose behalf it appears, and argues the issue generally.

The Organization asserts that the issue concerns the right to use section laborers of Maintenance of Way Department to rerail cars within the yard limits, and in its oral argument states that the claim is filed in behalf of the carmen employed at the Marceline yards.

As to the carmen employed at Marceline, the applicable rule is 108 (d) which reads, in common form: "For wrecks or derailments within yard limits, a sufficient number of carmen (where employed) will be called to perform the work. If no carmen are on duty, other available Mechanical Department employes may be used."

The purport of carrier's argument is that the word "work" in that rule includes only such work as belongs exclusively to carmen and that rerailing is not within the scope of their classification of work rule, so it may be performed by section hands.

If that argument were sound there would be no purpose to Rule 108 (d) since carmen are entitled to their exclusive work without that rule.

The rule must be construed together with 108 (c), permitting train, yard and engine crews to re-rail when wrecker is not required, and the word "work" could not be intended to include work properly belonging to other crafts, but it must be meant to include the actual work of re-railing and handling of equipment incidental thereto such as here involved. Awards of this division have repeatedly so held. Awards 1760, 1442, 222. The several awards cited and quoted by carrier refer to derailments outside of yard limits and are not applicable here.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1955.