Award No. 2343
Docket No. 2108
2-MP-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement other than Carmen and Helpers were improperly used in rerailing Car S. P. 101605 on Eli Track No. 1 in Train Yards, Sedalia, Missouri, on October 7th, 1953 about 3:30 P. M.

2. That accordingly the Carrier be ordered to compensate Carmen W. C. Paull and R. H. Sims four (4) hours at the straight time rate.

EMPLOYES' STATEMENT OF FACTS: The carrier maintains a car shop at Sedalia, Missouri, as well as a rip track, where something over 500 carmen and helpers are employed, and on October 7, 1953 about 3:30 P. M. Car S. P. 101605 was derailed in the train yards at Sedalia, Missouri on Trackt Eli No. 1 and Maintenance of way forces were called and used to assist switch crew in rerailing this car—Section men Pete Whitting and Bill Girken being used for this work.

This dispute was handled with carrier officials designated to handle such affairs who all declined to adjust the matter. The agreement effective as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that the carrier violated Rule 120, in pertinent part as reading:

> "Rule 120. . . . For wrecks or derailments within yard limits, sufficient carmen and helpers will be called to perform the work, if available."

when other than carmen were used in rerailing Car S. P. 101605 on October 7, 1953, about 3:30 P. M. The rerailment occurred within the yard limits and employes other than carmen performed the work of rerailing Car S. P. 101605, notwithstanding the fact that the claimants were working in the shops nearby and were available and willing to protect this work—the claimants also maintain telephones and are regularly assigned to protect work of this nature.

There is no support for this claim in the rules, interpretations, settlements and practice on this property. Accordingly, it should be denied.

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.

Claimants are Carmen in the Car Shop at Sedalia, Missouri. On October 7, 1953, a car was derailed in the train yards at that point. Claimants contend that they should have been used instead of the trainman and two section men used by the carrier. Claimants rely on Rule 120, current agreement, which provides in part:

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

The record shows that carrier employs over 500 carmen and carmen helpers at its Car Shop at Sedalia. The Car Shop is approximately a mile from the train yard, the employes at the shop holding point seniority at the Car Shop. Separate seniority rosters are maintained at the train yards and Car Shop. The submissions of the parties are in dispute as to whether Car Shop employes performed work at the train yard. The Organization contends that they do while the Carrier asserts that such employes work in wrecking and rerailing service in the train yard only in case of extreme emergency. It is not disputed that the seniority of employes at the Car Shop is confined to that point.

In the present case, the car involved was derailed while being switched in the train yard. The car was rerailed by the train crew. The crew was assisted by section men who secured and handled the blocks used by the trainmen in rerailing the car. There was no wrecker called or any other maintenance of equipment used.

It is clear that carmen do not have the exclusive right to rerail engines and cars except where specific rules so provide, such as wrecker service, etc. The Organization contends that Rule 120 is such a rule. It has been a long accepted rule, however, that trainmen handling an engine or car at the time of its derailment may rerail it whether on the road or in a yard where it can be done without the aid of wrecking service. This appears to be the rule on this carrier.

It is clearly the practice on this carrier that maintenance of way employes may properly assist trainmen in rerailing engines and cars by securing and handling blocks, cables, etc. In other words, such employes may perform common labor in connection with such rerailments. The carrier cites three instances where such work has been so performed without complaint by the Organization since the making of the last agreement with the carmen. The record shows that the practice had existed for many years prior to such last agreement which the record shows was in 1949.

This Board has held that the rerailing of engines and cars is not the exclusive work of carmen when a wrecker is not called out. Awards 1322, 1482. The record shows a practice of long standing that section men may assist train crews and switch crews in rerailing engines and cars by doing common labor in connection therewith. The question before us in the present case is whether or not the quoted portion of Rule 120 permits train and

switch crews to do rerailing of engines and car within yard limits. We concur in the view that this portion of the rule is not a limitation upon the rights of train and switch crews to rerail engines and cars. It simply means that if additional employes are required, carmen will be called if they are available. Awards 222, 425, 827, 1008, 1442, 1760. The record here shows that the trainmen were able to rerail the car. The carmen therefore have no claim, assuming that they were available under the rule. Since the use of the section men was in conformity with a long established practice that they could perform the common labor incidental to the rerailment, we fail to see where the carmen have a valid claim. A denial award is therefore required.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November, 1956.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2343

The majority states that "This Board has held that the rerailing of engines and cars is not the exclusive work of carmen when a wrecker is not called out," and cites Awards 1322 and 1482. It is unnecessary to discuss the cited awards since they refer to rerailments outside yard limits and the instant rerailment took place within yard limits.

The majority admits that Rule 120 means that if additional employes are required to do rerailing carmen will be called if they are available, but attempts to justify the use of section men in place of carmen because of what they state "was in conformity with a long established practice that they could perform the common labor incidental to the rerailment." There is no proof in the record of such practice and, even had there been, it has been repeatedly held that practice will not change a plain unambiguous rule—such as is Rule 120.

To permit the less important work in connection with rerailing to be assigned to persons outside of the carmen's craft would be to whittle away the purpose of Rule 120. Such practice would be a breaking-down of a condition established by the rule and invite a result where exceptions to the rule would become more important than the rule itself. The use of section men in lieu of carmen in the instant case was a violation of Rule 120 and we are therefore constrained to dissent from the findings and award of the majority.

George Wright
R. W. Blake
C. E. Goodlin
T. E. Losey
Edward W. Wiesner