Award No. 3257
Docket No. 3040
2-B&O-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Roscoe G. Hornbeck when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the provisions of the controlling agreement when on February 7, 1957, the General Yard Master at this station instructed a yard crew composing of one (1) Conductor and three (3) trainmen, one (1) engineer and one (1) fireman with Diesel locomotive No. 455 to rerail Baltimore and Ohio Box Car No. 280537 at the North end of the old scale track, Toledo, Ohio yard.

2. That accordingly, the Carrier be ordered to compensate each of the following Carmen two (2) hours pay at the pro rata rate:

Fred Galla Harold Carr John Stewart Louis Roser

EMPLOYES' STATEMENT OF FACTS: Fred Galla, Harold Carr, John Stewart and Louis Roser, hereinafter referred to as the claimants, are employed by the Baltimore and Ohio Railroad Company, hereinafter referred to as the carrier, as carmen at Toledo, Ohio. Claimants are regularly assigned to the "Rip Track" on the 7:00 A. M. to 11:30 A. M. — 12:00 Noon to 3:30 P. M. shift, Monday through Friday with Saturday and Sunday as rest days.

At approximately 4:00 A. M. on February 7, 1957, a third trick switch crew, with assigned hours of from 11:00 P. M. to 7:00 A. M., derailed Baltimore and Ohio Box Car No. 280537. Submitted herewith, identified as Exhibit A, is a copy of a statement by Engineer Charles S. Eckman of his crew which states that the crew did not rerail Car No. 280537.

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 cars 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."

The claim here is without merit and ought to 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.

Parties to said dispute were given due notice of hearing thereon.

All claims as to insufficiency of notices have been waived.

Claimants invoke in their behalf the second sentence of Rule 142 of the controlling agreement.

The earlier awards of this Division, Nos. 222, 1442, support the claim of the employes.

The rationale of later findings is to the effect that under the rule carmen do not have the exclusive right to do the work of rerailing locomotives or cars unless a wrecking crew is called or required to do the work. These findings have been made as to wrecks occurring within and outside the yards.

An award where the derailment occurred within the yards is No. 2343 (1956), this Division.

This submission differs from the instant case only in that the derailed car in the former was rerailed by the crew in charge when the derailment occurred with help from Maintenance of Way men. This variance is urged as supporting the claim here.

In 2049, this Division, claim denied, the second sentence of Rule 130, there under consideration, carried the same phrase as found in the first, viz:

"When wrecking crews are called"

This phrase, in probability, is by implication written into the second sentence of Rule 142. No valid reason appears for distinction in procedure when derailments occur within or without the yards except as to number of carmen to be called when required.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3257

The majority in their findings refer to Awards Nos. 2343 and 2049 of the Second Division. A comparison of the rules involved will show that neither is in point:

The rule involved in Award No. 2343 reads as follows:

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

The rule involved in Award No. 2049 states:

"WHEN wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit."

Rule 142 of the agreement controlling in the instant case prescribes that

"For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

The majority attempts to justify a denial award by holding that the phrase "when wrecking crews are called" in probability, is by implication written into the second sentence of Rule 142. This seems farfetched to say the least in view of the fact that Rule 166 of the agreement clearly states that "This agreement . . . shall continue in effect until either party indicates a desire for a change . . ." The agreement discloses that Rule 142 was established by the United States Railroad Labor Board effective December 1, 1921. The cover on the agreement shows that the agreement was reprinted in May 1940 and November 1952 without any changes having been made in original Rule 142 and is therefore in full force and effect as originally established. The language of the rule is plain as to its meaning and is not subject to implication. It should be enforced as made. This Board has no authority to impose its ideas in a matter that is plainly covered in the rule by clear and concise language.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner