

Award No. 3286
Docket No. 2925
2-D&RGW-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the rules of the current Agreement, particularly Rules 28, 41 and Scope coverage were violated when other than Carmen were used to rerailed Engine 5301, September 3, 1956, on the Monarch Branch, within the Salida, Colorado Yard Limit.
2. That accordingly, the Carrier be ordered to compensate the following Carmen working at Salida, Colorado, eight (8) hours at the pro rata rate for the aforesaid violation:

John Skufca, Jr.
Clifton Rich

Joe Shine
George Coklones

EMPLOYEES' STATEMENT OF FACTS: On Monday, September 3, 1956, Engine 5301 was derailed on the Monarch Branch of The Denver & Rio Grande Western Railroad Company, hereinafter referred to as the carrier. The section foreman, ten section men and other supervisors rerailed Engine 5301 with blocks and frogs between the hours of 7:30 A. M. and 3:30 P. M. The section employees and supervisors worked approximately three hours to rerailed the engine.

The scene of the derailment is within the Salida, Colorado Yard Limit. It is listed as such in the controlling Time Table No. 141, effective September 25, 1955, Page 7 in part 4 captioned "Yard Limit Stations" and reads in part as follows:

"Salida
"Salida-Monarch"

In addition, the Yard Limit Boards are figured from Main Line board at mile post 215.1 at Salida Yard to the Monarch Mine Tipple at Mile post 236.7.

limits at points of employment which is recognized by practice on all railroads and Rule 27 specifically provides "Seniority of employes in each craft, covered by this agreement, shall be confined to the point employed as follows: . . . Salida (including Tennessee Pass, Montrose, Leadville and Marshall Pass)" as hereinbefore stated (and this fact is repeated because of its importance) at no time were the Salida Terminal limits extended nor was the seniority or point of employment changed in any manner for the employes involved in this claim by reason of the fact that the territory involved was designated as yard limits for train operation only.

It is the prerogative of management to establish yard limits to fit the dictates of operating conditions; however, management cannot make any change in yard switching limits or extend the seniority or point of employment of employes without first negotiating such changes with the representatives of the employes involved. Of course, no such negotiations were required in this case.

In conclusion, the carrier states this was a derailment caused by a defective rail. There was no wreck. There was no damage to locomotive or caboose. Sectionmen were used to repair the track and assist train and enginemen in placing blocks and rerailing frogs. Employes other than carmen have always assisted in rerailing a car or locomotive and nothing in the agreement necessitates the use of carmen when a wrecker is not needed or when no repairs to equipment are necessary.

There is no merit to this claim and it must 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.

Diesel Engine 5301 was derailed at Monarch, Colorado, on September 3, 1956. With the assistance of the section gang at Monarch, the train crew rerailed the engine within two hours by using ties and tie plates together with frogs from the derailed engine.

The carmen's organization contends that Monarch is within Salida yard limits and bases its claim that carmen should have been called to assist in the rerailing on the ground that Rule 41(c) of the applicable agreement provides that "for wrecks or derailments within yard limit, sufficient carmen will be called to perform the work."

Monarch lies about 21 miles west of the western boundary of Salida Yard Switching limits. Monarch has been operated as road territory for more than 70 years. In 1954, for train operation convenience only and to eliminate the necessity of issuing clearance and train orders to the Monarch road crew, the territory between Salida and Monarch was designated by the carrier as within yard limits. This action involved no extension of the long established Salida yard switching limits, and the change did not affect the rights, seniority

or territory of any employe. We think the change indicated was not sufficient to extend the established Salida yard limits so as to embrace Monarch within yard territory for the purpose of Rule 41(c). Under the facts and circumstances shown of record the carrier was not required to call carmen to assist in rerailling the locomotive at Monarch which is in road territory and to which Rule 41(c) is not applicable under the established facts.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3286

The reason Monarch was designated by the carrier as being within the yard limit of Salida is immaterial. The fact remains that it is within the yard limit of Salida, as shown by various exhibits in the case, and therefore the use of other than carmen to perform the instant rerailling between Salida and Monarch was in violation of the following portion of Rule 41(c) of the governing agreement:

“ . . . For wrecks or derailments within yard limit, sufficient carmen will be called to perform the work.”

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner