

Award No. 4362

Docket No. 4008

2-B&M-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES: (1) That under the controlling agreement, it was improper to use Car Foreman L. F. Dupuis and two sectionmen in rerailling Diesel Locomotive B&M No. 1126 February 26, 1960.

2. That accordingly, the Carrier be ordered to compensate Freight Carmen Paul Goodsell, R. J. Foster and A. Mayo each in the amount of six (6) hours at the rate of time and one-half, plus traveling time to and from Billerica Shops on account they were not called to perform the work of rerailling said Diesel Locomotive.

EMPLOYES' STATEMENT OF FACTS: On February 26, 1960, John Creighton and W. Dupuis were called to reraill Diesel Locomotive B&M No. 1126 at Concord, N. H. Yards. The above men apparently were unable to handle this job alone, so two sectionmen were used—one to work with each freight carman. Car Foreman L. F. Dupuis also worked with these men in rerailling these locomotives instead of calling in Carmen Goodsell, R. J. Foster and A. Mayo, who were ready, willing and available to perform this service if they only had been called to do so.

This dispute has been handled with all carrier officers authorized to handle grievances including the highest designated official with the result that he too declined to adjust it.

The agreement dated April 1, 1937, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that regularly assigned wrecking crews, except engineers and firemen, must be composed of carmen, as provided by Rule 112, reading in pertinent part:

"Regularly assigned wrecking crews (not including engineers and firemen) will be composed of carmen . . ."

2. The classification of work rule does not give carmen exclusive right to all work at the scene of wrecks and derailments—See Second Division Awards 1322 and 1482.

3. The instant wrecking rule “specifically provides for the augmentation of the wrecking crew with crafts other than carmen.” See Second Division Award 3411.

Without prejudice to the company's position that the claim is without validity on the merits, the monetary claim as here submitted is clearly excessive for the following reasons:

(a) The actual time in which the sectionmen were engaged in the work was less than three (3) hours, not six (6) as claimed. Unperformed travel from Billerica to Concord and return is not a proper element of damage.

(b) Only two sectionmen were used, not three maintenance of way men as claimed.

(c) The penalty rate for work claimed but not performed is straight-time, not overtime as claimed.

The claim is without merit and 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.

Parties to said dispute waived right of appearance at hearing thereon.

In the morning of February 26, 1960, a diesel locomotive was derailed in the Carrier's yard at Concord, New Hampshire. Car foreman L. F. Dupuis and two carmen who were stationed at Concord and on duty at the time of the derailment were sent across the yard to reraill the locomotive. They did so by use of jacks and blocking. They were assisted by two sectionmen who were also stationed and available at Concord. The time spent by the sectionmen was about three hours. No wrecker or similar wrecking equipment was used.

The three Claimants R. J. Foster, P. Goodsell, and A. Mayo have been employed as carmen at the Carrier's Billerica (Massachusetts) shops, a distance of about fifty miles from Concord. They filed the instant grievance in which they contended that the Carrier violated the applicable labor agreement when it used car foreman Dupuis and the two sectionmen in rerailling the locomotive. They requested compensation in the amount of six hours each at the rate of time and one-half plus traveling time from and to Billerica. The Carrier denied the grievance.

1. The law of labor relations is well settled that the rights and obligations of the parties to a labor agreement must be ascertained by reading the

agreement in its entirety, rather than from isolated parts or fragments. Single words, sentences or sections cannot be isolated from the context in which they appear and be construed independently with disregard for the apparent intent and understanding of the parties as evidenced by the entire agreement. The meaning of each section or sentence must be determined by reading all pertinent sections and sentences together and coordinating them in order to accomplish their evident aim and intent. See: Award 4335 of the Second Division and cases cited therein.

Applying the above principle to this case, we have reached the following conclusions:

The Claimants argue that their claim is justified under the second sentence of Rule 113 of the labor agreement as modified by a letter agreement, dated July 1, 1940. Said Rule as modified reads as follows:

"Make-Up Wrecking Crews

"When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks within yard limits, sufficient carmen, preferably members of the regular assigned wrecking crew, if available, will be called to perform the work."

A critical examination of the entire Rule 113 has convinced us that it plainly deals with the composition of make-up wrecking crews. The first sentence governs the composition of wrecking crews in the event of wrecks outside of yard limits and the second the composition of wrecking crews in the event of wrecks within yard limits. Hence, the Rule is only applicable when a wrecking crew is called.

The flaw in the Claimants' position is that they read the second sentence of Rule 113 in isolation without paying attention to the context in which it appears. However, the sentence can properly be understood and interpreted only if it is read together and coordinated with the entire Rule 113. See: Award 4337 of the Second Division.

In the instant case, no wrecking crew was called. Moreover, no wrecking equipment, such as a wrecker or a crane was used, the operation of which would have belonged to the carmen's craft in accordance with our Award 1917. Accordingly, the work performed by the car foreman and the two sectionmen in rerailling the locomotive in question did not exclusively belong to carmen under Rule 113. See: Awards 1757 and 2343 of the Second Division.

In summary, we hold that the Carrier did not violate Rule 113 or any other provision of the labor agreement. We therefore, deny the claim at hand.

2. Since we have denied the instant claim for the above stated reasons, it becomes unnecessary to rule on the Carrier's further argument that the Claimants were not available within the contemplation of the second sentence of Rule 113 and we express no opinion on the validity of said argument.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1963.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4362

It appears that what is termed "a critical examination" of Rule 113 did not enable the majority to comprehend the rule:

"When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen, preferably members of the regular assigned wrecking crew, if available, will be called to perform the work."

The Board has no right to impose its ideas when the language of a rule is so plain in its meaning as to be beyond interpretation. The first sentence of Rule 113 provides that when wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew **WILL ACCOMPANY THE OUTFIT**. For wrecks or derailments within yard limits, sufficient carmen will be called **TO PERFORM THE WORK**. The last sentence of Rule 113 clearly and unequivocally states that on derailments within yard limits sufficient carmen will be called to perform the work. Sufficient carmen should have been called in compliance therewith in the present case and the instant claim should therefore have been sustained as was done in Second Division Award 1917 where, without the services of a referee, it was held that "The evidence of record discloses that in violation of the controlling agreement other than carmen were used to assist in rerailing . . ."

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink