

Award No. 4569

Docket No. 4293

2-GM&O-CM'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**GULF, MOBILE & OHIO RAILROAD COMPANY
(SOUTHERN REGION)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement others than Carmen were improperly assigned to re-rail GM&O cars 62137 and 62188 in Mobile, Alabama yard on March 8, 1961.

2. That accordingly, the carrier be ordered to make the Carmen whole by compensating Carmen A. N. Tew and M. T. Everett in the amount of four (4) hours each at the straight time rate of pay.

EMPLOYES' STATEMENT OF FACTS: On date of March 8, 1961, at about 6:00 P.M., two freight cars, GM&O 62137 and 62188, became derailed on the east leg of the wye in Frascatti Yards, Mobile, Alabama.

Assistant Superintendent W. B. Killough and two laborers secured blocks and re-railers from the shops, placed and secured these blocks and re-railers under the cars for the rerailing of same.

Carmen A. N. Tew and M. T. Everett, hereinafter referred to as the Claimants, are employed by the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier at the Mobile, Alabama shops. They were off duty and available to be called out to perform this work of re-railing cars.

This case has been handled with carrier officials up to and including the highest officer so designated, with the result that he has declined to adjust it.

The agreement effective January 1941, as subsequently amended, is controlling.

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.

On March 8, 1961, two freight cars became derailed on a leg of the wye in Carrier's Frascatti Yards, Mobile, Alabama.

There is a factual dispute as to whether the derailling was done by the train crew or by the assistant superintendent and two laborers.

In view of the claim as presented, we need not resolve this factual dispute. The claim reads in part as follows:

" * * * others than Carmen were improperly assigned to rerail GM&O cars 62137 and 62188 * * *."

Rule 509 of the controlling agreement reads in part as follows:

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

We have reviewed our numerous awards concerning the interpretation of identical rules concerning wrecking service, both within and outside of yard limits. That which we said in our Award 222 seems to best delineate the point at which Carmen become entitled to the derailment work within yard limits. In that Award we said:

"It is the opinion of the Division that Rule 120 contemplates even in the case of a minor derailment that when yard forces are unable to correct the condition, and it becomes necessary to call other employes and equipment, that the work then belongs to the carmen, and that sufficient carmen and their helpers shall be called to perform the work, if available."

In the light of what we there said, and what we have said in subsequent Awards, we find that where car equipment is not damaged, or special tools and experience of the Carmen's craft are not required, the rerailing may be done by other than Carmen. Such was the case here and we hold that there was no agreement violation.

AWARD

Claim 1: Overruled.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry Passaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July, 1964.

Award No. 2049, Carmen vs. the Gulf Coast Lines, Referee Douglass, decided January 23, 1956. The facts in Award No. 2049 are that a section foreman and eight section men rerailed five cars with jacks at Vanderbilt, Texas. The referee pointed out:

"The regularly assigned wrecking crew was not called to perform the work of rerailing cars, nor was the wrecker outfit used.

The record does not indicate to this Board that by virtue of rules or by past practice the work of rerailing cars is the exclusive work of the regularly assigned wrecking crew when said crew is not called or when the wrecking outfit or crane is not used.

Claim denied."

Award No. 1763, United Railroad Workers of America vs. Pittsburgh & Lake Erie Railroad Company, Referee Carter, decided May 26, 1954. In this case an engine at McKees Rocks, Pa., was rerailed by a machinist and roundhouse laborers. Referee Carter held:

"The rule is, under such an agreement we have here in the absence of a specific rule to the contrary, that the rerailing of locomotives and cars is not the exclusive work of carmen when a wrecker is not called or needed. Award 1482." (Emphasis ours)

Award No. 1482, Carmen vs. Louisville and Nashville Railroad Company, Referee Carter, decided August 2, 1951. Referee Carter held:

"It is only when a wrecker is required that all wrecking work is assigned to carmen. If the wrecker is called to wrecks or derailments outside of yard limits, the regularly assigned crew will accompany it. We are in accord with the carrier's position, supported by long practice as shown by the record, that the rerailing of locomotives and cars is not the exclusive work of carmen when a wrecker is not called or needed. Award 1322." (Emphasis ours)

Award No. 1322, Carmen vs. Illinois Central, Referee Donaldson, decided July 26, 1949. This case involves the rerailing of a car at Helvetia, Louisiana, by the members of a train crew assisted by section laborers. Referee Donaldson reviews the history of the wrecking crew and pointed out that the words of the rule clearly indicated that there would be circumstances where wrecking crews would not be called to the scene of wrecks and derailments. The referee also pointed out that the placing of a frog or a rerailer is not mechanics' work. The claim was denied.

These awards involving decisions of five different referees cover a span of some ten years holding that the rerailing of cars is not the exclusive duty of carmen when a wrecker is not called or used. These decisions reach a practical conclusion clearly contemplated by the parties to the agreement. The use of carmen to perform the rerailing of cars would only be an unnecessary waste of manpower and revenue.

C O N C L U S I O N :

It has been the practice on this carrier for many years antedating the agreement for other than carmen to rerail cars. The agreement does not restrict this right. The decisions of this board support the practice and practicality of having cars rerailed by other than carmen.

Carrier respectfully requests that the claim be denied.