

Award No. 4674

Docket No. 4384

2-UP-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That the current agreement, particularly Rule 138 thereof, was violated when other than carmen were used to rerail cars within yard limits.

(2) That accordingly, the Carrier be ordered to pay Carmen Glenn McCalla and Leon McMorris for a call of four hours each at straight time rate for said violation.

EMPLOYES' STATEMENT OF FACTS: Carmen Glenn McCalla and Leon McMorris, hereinafter referred to as the claimants, are regularly employed as carmen by the Union Pacific Railroad Company, hereinafter referred to as the carrier, at North Platte, Nebraska.

On May 24, 1961, Cars UP 88823 and 87161 were derailed in the immediate vicinity of the repair tracks at North Platte, Nebraska where carmen were working at the time. When the switch crew, handling said cars, needed assistance to rerail them, section foreman and sectionmen were used to set frogs, handle cables and make hitches with the cables to the derailed cars and switch engine. These facts are evidenced by Master Mechanic Dunn's letter of June 21, 1961, wherein he quotes Superintendent T. F. Shanahan who acknowledges these facts.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest officer of the carrier, all of whom have declined to make satisfactory adjustment.

The Agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: The foregoing indisputable facts reflect, beyond question, that the derailment of the cars occurred within the yard limits of the carrier's North Platte Yard. The switch crew was unable to rerail the cars without assistance: Therefore, under the clear and unambiguous language of that part of Rule 138 reading:

The rerailling work here was simple and uncomplicated. It did not involve any raising of the car by jacks or by use of a wreck crane as is sometimes the case. It merely involved the placing of frogs which required no skill.

The work in dispute in this docket took place at a time when the claimants were off duty. They are, in effect, demanding compensation at the overtime rate. Therefore, even if it were conceded *arguendo* that the organization's theory of the case was supported and Union Pacific carmen should have been used, these claimants still would not be entitled to any compensation. Other carmen were on duty when the work was performed and if it had been necessary and proper they would have been used. These claimants would not have been called and paid punitive time under any circumstance. Thus, in any event, the carrier would not be required to have work performed at penalty rates when it was possible, within the frame work of the agreement, to have work performed by employees on duty at straight time. In this regard, see Third Division Awards No. 5331, No. 7191, No. 7227; Special Board of Adjustment No. 173, Award No. 32, Special Board of Adjustment No. 169, Award No. 10; First Division Awards Nos. 9990, 10086, 12169, 12297, 12669 and 15527.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 disputes were given due notice of hearing thereon.

The Claimants, Carmen Glenn McCalla and Leon McMorris are regularly employed at Carrier's facility at North Platte, Nebraska.

On May 24, 1961, one pair of wheels on each of two cars (UP 88823 and 87161) were derailed in the Carrier's North Platte Yard. The derailments were caused by a large amount of gravel spread on the rails and track beds by a Maintenance of Way Section Gang.

The Section Foreman and two Sectionmen assisted the train crew in rerailling the cars which work took approximately twenty minutes to accomplish.

The Organization contends that the Carrier's action violated Rule 138—which reads as follows:

“When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of 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 Carrier's position is that Carmen do not have “the exclusive right to reraill cars or engines in all instances” and as the Carrier did not call a wrecking crew, Rule 138 is inapplicable.

A grammatical and semantic analysis of Rule 138, we believe, might be helpful. The first sentence of that Rule, *supra*, starts with “When” which is an adverb, and, in the manner in which it is used, introduces an adverbial

time clause, and not a conditional clause as has been so frequently claimed. The conjunction "if" is used to indicate a condition or supposition that may or may not occur. For example:

Example 1. If I go to lunch I will eat roast beef.

That sentence indicates that I may or may not go to lunch. Therefore, "if" is properly used in a conditional sense.

Example 2. When I go to lunch I will eat roast beef.

In the above sentence "When" indicates or acknowledges that a certain situation will necessarily arise and when it does, this is the procedure that will be followed.

It is our interpretation that the first sentence of Rule 138 gives the Carrier the right to use or not to use a wrecking crew "outside of yard limits". The second sentence of that Rule, however, is not dependent on the first sentence for its meaning and purpose, because not only are the sentence structures different but also the conditions and requirements of each sentence are different. We do not believe that the second sentence gives the Carrier the choice of using or not using a sufficient number of carmen "For wrecks or derailments within yard limits". Accordingly, we believe the Carrier's action violated the controlling Labor Agreement.

The record indicates that employees other than the Claimants would have done the work in question. Therefore, we remand that portion of the claim to the property for a determination of the proper Claimants, and the payment to them of the sum of money represented by the twenty minutes actual work time involved at the pro rata rate.

AWARD

Claim 1—sustained.

Claim 2—as per above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.