Award No. 4769
Docket No. 4609
2-NP-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 7, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the Current Agreement, particularly Rule 41 G, 80 and 89 by the improper assignment of Carmen Apprentice to perform wrecking service and overtime during the period November 28 to December 1, 1962, both dates inclusive.

2. And that, accordingly, the Carrier be ordered to compensate Carman R. J. Froehlich, in the amount of 33½ hours at time and one half rate account of said violation.

EMPLOYES' STATEMENT OF FACTS: The Northern Pacific Railway Co., hereinafter referred to as the carrier, maintains a fully equipped wrecking outfit (No. 47) with regularly assigned wrecking crew at its car shop in Missoula, Montana. In addition, carrier also maintains at Missoula a smaller wrecking derrick identified as No. 27.

On November 27, 1962, carrier called and sent its regular wrecking outfit (No. 47) with regular assigned wrecking crew to a derailment at Rivulet, Montana. At 5:45 A. M., November 28, 1962, carrier called two carmen from the Missoula Overtime Board and Carman Apprentice A. W. Johnson and sent them along with the small derrick (No. 27) to Rivulet to assist with the rerailing work.

Carman Apprentice A. W. Johnson worked as follows in wrecking service at Rivulet:

Nov.	28,	1962	5:45 A. M. to	9:15 P. M.
Nov.	29,	1962	6:00 A. M. to	7:10 P. M.
Nov.	30,	1962	6:00 A. M. to	6:20 P. M.
Dec.	1,	1962	6:00 A. M. to	10:30 P. M.

Carman Welder, R. J. Froehlick, hereinafter referred to as the claimant, is regularly employed by carrier in its car department at Missoula, with regular assigned hours and work week of 7:30 A. M. to 4:00 P. M., Tuesday

CONCLUSION

The jurisdiction of this Division is limited to the interpretation of the July 1, 1955 shop crafts agreement.

A review of the July 1, 1955 shop crafts agreement makes it manifestly clear that the claim covered by this docket should be summarily denied because

1. Rule 75 classifies the work of carmen by specifying the work allocated to this class of employes, including all other work generally recognized as carmen's work.

2. Wrecks or derailments outside of yard limits when handled with the wrecking outfit is generally recognized as carmen's work.

3. Rule 76 grants to apprentices the right to perform the work classified as that of carmen under Rule 75.

4. Rule 80 sanctions the use of men of any class, without restriction, to assist members of a wrecking crew.

5. Rules 89 and 90 do not rigidly restrict the work to be performed by apprentices but establish general guidelines to be followed in training apprentices so that they will acquire experience in all branches of the trade.

6. Rule 41(g) is a rule of general application, inferior to Rule 80, a rule of specific application.

7. Aside from the application of the rules of the July 1, 1955 Shop Crafts Agreement, it would be wholly unrealistic and impracticable for Mr. Froehlich to have filled his assigned position of carman welder at Missoula on November 28, 29, 30 and December 1, 1962 and then handled the work performed by Mr. Johnson on an overtime basis at a point some 48 miles distant.

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.

At Missoula the Carrier maintains wreckers Nos. 27 and 47, and a regularly assigned wrecking crew of eight carmen. The wreck being only 48 miles away, the crew returned to Missoula each night. Wrecker No. 47 and the entire crew were sent out the first day, and for the other five days the crew was augmented by Wrecker No. 27, with two carmen and a carman apprentice. Each morning the apprentice was called before his regularly assigned hours.

Claim 1 is:

> "That the Carrier violated the Current Agreement, particularly Rule 41 G, 80 and 89 by the improper assignment of Carmen Apprentice to perform wrecking service and overtime * * *."

Rule 89 is the carmen apprentices' schedule of work rule, and provides that it "is designed as a guide and will be followed as closely as the conditions will permit." There is nothing in the record to show that this requirement was violated.

Rule 41 (g) provides in part:

> "An apprentice shall not work overtime except continuously with regular working hours when necessary to complete work upon which engaged at close of regular working hours."

This rule permits an apprentice to continue his work after regular hours; but it clearly forbids calling him out for overtime work in advance of his regularly assigned hours. To that extent Rule 41 (g) was violated, without regard to Rule 80.

Nothing in Rule 80 forbids the use of carmen apprentices to assist wrecking crews. On the contrary, it authorizes the use of "men of any class" when needed, which necessarily includes the class of apprentice.

The Carrier's position is that there was no violation of any rule, since Rule 80 is a special rule relating to wrecking service, and therefore here takes precedence over, and supersedes Rule 41 (g), which it contends is a general rule pertaining to service in general.

The argument is invalid, for two reasons. First, Rule 41 (g) is not a general rule; it is a special rule relating to apprentices' overtime. Second, it is only where two provisions are so repugnant — so reciprocally opposed — as to prevent compliance with both, that one prevails over the other. Here, both could have been complied with; the apprentice could have been used for wrecking service under Rule 80, without violating the overtime limitation under Rule 41 (g). It might have been inconvenient, but it was not impossible. Therefore Rule 41 (g) was violated.

The fact that Rule 80 permits the use of carmen apprentices, like men of all other classes, in wrecking service under certain conditions, still does not mean that Rule 80 was not violated in this instance.

In the Employes' statement of position they say:

> "Carrier has attempted to defend its action in the instant case with that part of Rule 80, reading:
>
> > 'Where needed, men of any class may be taken to assist members of the wrecking crew.'
>
> however, it has failed to show that an apprentice was needed to, or did assist members of the crew. Further, it cannot so show for the simple reason that the apprentice was sent as a member of the crew and he worked as a member of the crew. There were several Carmen available at Missoula, one of whom is claimant herein, for assign-

ment to the wrecking service at Rivulet, thus no good reason exists for sending other than a Carman to perform the wrecking service."

Thus it is contended that this portion of Rule 80 was violated in two respects: First, that the apprentice was taken, not to assist members of the wrecking crew, but as a member of the crew, which is not permissible; second, that as a carman was available, the apprentice was not needed.

The first objection is not sustainable; for the whole eight man wrecking crew was used, and the apprentice was not part of it, but was used to assist it. As for the second objection, there would seem to be only two reasons why men of other classes may be needed to assist members of the wrecking crew; the first is that no carman is available; the other is, that some skill is needed which a carman does not possess. Obviously the latter does not apply in the case of an apprentice. But the Employes allege, and the Carrier does not deny, that several carmen were available for this service, one of whom was claimant. For that reason the apprentice was not needed, and Rule 80 was violated. However there is no allegation or showing that Claimant was the carman entitled to assignment or would have been called if the apprentice were not; consequently he is not shown to have lost any compensation and is not entitled to recover any.

AWARD

Claim 1 sustained; Claim 2 disposed of in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1965.

RESTRICTIVE CONCURRING OPINION, AWARD NO. 4769, DOCKET NO. 4609

We concur in the Findings and Award in reference to Claim 1 but are at a loss to understand the conflicting findings in reference to Claim 2; said findings stating that "* * * the Employes allege, and the Carrier does not deny, that several carmen were available for this service, **one of whom was claimant** * * * However there is no allegation * * * that Claimant was the carman entitled to the assignment * * * (this in spite of the fact that he is specifically named in Claim 2) consequently he is not shown to have lost any compensation and is not entitled to recover any."

It is our opinion that claimant, Carman R. J. Froehlich, was entitled to recovery of compensation as claimed.

E. J. McDermott

C. E. Bagwell

T. E. Losey

R. E. Stenzinger

James B. Zink

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