

Award No. 4833

Docket No. 4681

2-CMStP&P-CM-'66

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. 76, RAILWAY EMPLOYEES'

DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC

RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement the Carrier improperly allowed other than Carmen to re-rail Diesel Unit 84B at the St. Paul, Minnesota Roundhouse track #5, Sunday, February 17, 1963.

2. That accordingly the Carrier be ordered to additionally compensate Carmen R. M. Nelson, Ted Potvin and J. M. Hentges in the amount of four (4) hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Carmen R. M. Nelson, Ted Potvin and J. M. Hentges, hereinafter referred to as the claimants, were regularly employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier. The claimants were employed and have a regular assignment of Monday through Friday, with rest days Saturday and Sunday, starting time 7:30 A.M. to 4:00 P.M.

The carrier maintains a car repair track at St. Paul, Minnesota.

On Sunday, February 17, 1963 at 10:50 A.M. diesel unit 84B was derailed at track #5 outside of the Roundhouse at St. Paul. Three men, Mrs. William Sukau, electrician foreman; Mr. Arthur Nelson, machinist; and an electrician helper or apprentice, upon instructions of Mr. Hatzenbuhler, district master mechanic, rerailed this unit. They encountered difficulty and were so engaged for a period in excess of four (4) hours. These facts evidenced by signed statements of Mr. Jewett and Mr. Blasko.

Claimants were available for call at the time of the violation and were not called.

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

in this regard we would point out that it has been conclusively held that your board is not empowered to write new rules or to write new provisions into existing rules.

It is the carrier's position that the instant claim is in no way supported by past practices, schedule rules or agreement and we respectfully request that the claim 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 and 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.

Rule 88 is the Wrecking Crew rule. Paragraph (c) of the rules provides as follows:

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

Its first clause refers to derailments outside of yard limits, and its second clause to derailments within yard limits, which include the roundhouse area. Since the first clause starts with the word "When," it is generally held not to apply unless the wrecking crew or outfit, or similar equipment, is called. Since the word is not used in the second clause although it is part of the Wrecking Crew rule, and since wrecking service is not specified in the carmen's Classification of Work rule, the holdings differ as to whether carmen have exclusive rights over derailments within yard limits, though not over derailments outside of those limits.

In this situation the question of past practice become material. Statements submitted by the Carrier that for many years it has always been the practice for roundhouse forces (not carmen) to rerail engines within the roundhouse area of the yards, and that the car department is called only when roundhouse force equipment is insufficient. The Employees' evidence states that carmen have on several occasions rerailed locomotives in the area without derricks and without assistance from roundhouse forces, but does not deny the Carrier's evidence that this has been done only when roundhouse force equipment is insufficient.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

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