

Award No. 4930

Docket No. 4793

2-HB&T-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

HOUSTON BELT & TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the controlling agreement, particularly Rules 23, 26, 10 and 115 were violated when wrecker foreman was assigned to reraill Penn. Car 345500 on March 3, 1964 at Houston, Texas.

2. That accordingly, the Houston Belt & Terminal Railway Company be ordered to compensate Carman Carl Klodginski in the amount of five (5) hours at the punitive rate for March 3, 1964, as he was available and should have been called to perform this work.

EMPLOYES' STATEMENT OF FACTS: Pennsylvania Car 345500 was derailed on Peters Siding, Houston, Texas on March 3, 1964 while under the operating control of the Houston Belt and Terminal Railway Co., hereinafter referred to as the carrier. F. J. Gradler, who is regularly employed by the carrier as wrecker foreman, with assigned hours of service 7:00 A.M. to 3:20 P.M., went to Peters Siding at approximately 5:00 P.M., rerailed the car by himself, completing the work at approximately 9:35 P.M. and returning to the shop at 10:00 P.M.

Carman Carl Klodginski, hereinafter referred to as the claimant, is regularly employed by the carrier at Houston, Texas as a carman. In addition, he is regularly assigned as a member of the wrecking crew, and was available for service on call.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including carrier's highest designated officer; all of whom have declined to satisfactorily adjust it.

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

POSITION OF EMPLOYES: It is respectfully submitted that the provisions of the carmen's special rules of the controlling agreement, particularly Rule 114, reading in pertinent part:

section men may assist train crews and switch crews in rerailing engines and cars by doing common labor in connection therewith. The question before us in the present case is whether or not the quoted portion of Rule 120 permits train and switch crews to do rerailing of engines and cars within yard limits. We concur in the view that this portion of the rule is not a limitation upon the rights of train and switch crews to rerail engines and cars. It simply means that if additional employees are required, carmen will be called if they are available. Awards 222, 425, 827, 1008, 1442, 1760. The record here shows that the trainmen were able to rerail the car. The carmen therefore have no claim, assuming that they were available under the rule. Since the use of the section men was in conformity with a long established practice that they could perform the common labor incidental to the rerailment, we fail to see where the carmen have a valid claim. A denial award is therefore required."

Rule 142 in Award 3257 is same identical rule as our Rule 115 which is cited as the basis of this claim. Referee R. G. Hornbeck stated quite conclusively:

"The rationale of later findings is to the effect that under the rule, carmen do not have the exclusive right to do the work of rerailing locomotives or cars unless a wrecking crew is called or required to do the work. These findings have been made as to wrecks occurring within and outside the yards. Claim denied".

Award 3265 Referee Hornbeck denied the claim. This again is the identical rule to our Rule 115 on which claim is based and refers to Awards 3257 and 2343.

In Award 3730, Referee H. A. Johnson issued denial award involving the identical rule.

In view of the well drawn line of the Second Division boards in dealing with this particular rule, which is worded identically on a majority of carriers, carrier cannot see how this board can issue other than a denial award, worded so as to preclude the progression of future like claims from consuming the valuable time of this honorable board.

Carrier feels certain that the application of Rule 115 has been adequately interpreted in the many past awards of this board and urges a denial award.

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 dispute waived right of appearance at hearing thereon.

This dispute involves the derailment of a car within the yard limits of Carrier at Houston, Texas. It is claimed that when a Wrecker Foreman was assigned to rerail the car the Agreement was violated.

F. J. Gradler, the wrecker foreman involved, is regularly employed as a carman with a carman's wages but is paid a differential of six cents per hour as a wrecker foreman in the event a wrecker is called. There was no wrecker called here. He was called to determine what would be needed to rerail the car. His judgment indicated that he could jack the car onto the track without assistance, which he did.

Therefore, the alleged violation complained of is non-existent since the work was performed by Gradler in his capacity as a carman.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1966.