

Award No. 4931

Docket No. 4794

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 EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

HOUSTON BELT & TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the controlling agreement, particularly Rules 114 and 115 were violated when the Houston Belt & Terminal Railroad Company used other than carmen to rerail car CNW box 3186 at Houston, Texas on March 30, 1964.

2. That accordingly, the Houston Belt & Terminal Railroad Company be ordered to compensate the following members of the regularly assigned wrecking crew in the amount of a four (4) hour call for March 30, 1964 as they were available and should have been called to perform this work:

G. W. McElroy
Carl Klodginski
N. B. Buford

B. J. Cates
J. A. Cooper

EMPLOYEES' STATEMENT OF FACTS: The Houston Belt & Railroad Company, hereinafter referred to as the carrier, maintains a regularly assigned wrecking crew at Houston, Texas. On March 30, 1964, car CNW box 3186 was derailed on Track 17 at the Congress Avenue Yard, Houston, Texas. The switch crew tried to rerail the car and the car was pulled approximately sixty (60) feet, however, they were unable to rerail the car.

On this same date, March 30th, Section Foreman O. E. McIlvain and four (4) members of the section crew rerailed this car with the use of frogs and blocks. The rerailment was completed at 9:00 A. M., March 30, 1964.

Carmen G. W. McElroy, Carl Klodginski, N. B. Buford, B. J. Cates and J. A. Cooper, hereinafter referred to as the claimants, who are members of the regularly assigned wrecking crew, were available and should have been called to perform this work.

This matter has been handled up to and including the highest designated officer of the carrier, who has declined to adjust it.

quired 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 claim. This again is the identical rule to our Rule 115 on which claim is based and refers to Awards 3257 and 2343.

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.

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 waived right of appearance at hearing thereon.

From the Record it appears that on March 29, 1964, a car was derailed at the Congress Avenue Yard of the Carrier at Houston, Texas. The switch crew attempted to rerail the car which was pulled 60 feet but they were unable to do so, the attempt to rerail the car resulting in considerable track damage. On Monday, March 30, 1964, in their regular assigned hours of duty, a section crew was used to repair the track damage and, after the track had been repaired, in setting frogs and wood blocking. This permitted the car to be pulled by a switch engine onto the track that had been repaired. There was no damage to the car, the majority of the work involved the restoration of the track. The time consumed in placing frogs and blocking and having the switch engine pull the car onto the restored track required only a small portion of the total time involved. The foreman and section crew did not rerail the car but performed only common labor incidental to the rerailing of the car by the switch crew.

It is Claimants' contention that they were members of a regularly assigned wrecking crew maintained by Carrier at Houston, Texas, and, that in violation of Rule 115 of the controlling Agreement, Carrier had assigned the foreman and four members of a section crew to the work of rerailing a car in the Congress Yards with the use of frogs and blocks; that the repair of the track was inconsequential to the instant case but the fact that other than carmen were called to perform the rerailing is paramount.

It is Carrier's position that, by long standing past practice on this Carrier, section crews have been permitted to perform the work of placing frogs and blockings when cars have been derailed and the actual rerailing has been done by switch crews; that on this property Carmen do not have the exclusive right to perform rerailing of engines and cars under every circumstance; that

the derailment in the instant case was in effect a minor one not requiring a wrecking crew.

The general rule prevailing on most properties where the subject has been under contention is contained in Award 3257 — Hornbeck: "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 the work. These findings have been made as to wrecks occurring within and outside the yards."

For the foregoing reasons, and in the interest of consistency in the Awards of this Board, the Claim will be disallowed.

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.