

Award No. 5226
Docket No. 5008
2-EJ&E-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Elgin, Joliet and Eastern Railway Company violated the current working agreement when, instead of assigning carmen Mr. F. Renzo and Mr. H. Hielscher to perform carmen's work, carrier officials performed carmen's work of rerailling EJ&E 32622 on October 18, 1964.

2. That the Elgin, Joliet & Eastern Railway Company be ordered to compensate Mr. F. Renzo and Mr. H. Hielscher four (4) hours at the straight time rate account the violation.

EMPLOYES' STATEMENT OF FACTS: The Elgin, Joliet & Eastern Railway Company, hereinafter referred to as the carrier, maintains a large repair track and inspection point at Kirk Yard, Gary, Indiana, where it employs a work force of a substantial number of carmen, two of whom are Mr. Frank Renzo and Mr. H. Hielscher, hereinafter referred to as the claimants. On October 18, 1964, EJ&E 32622 was derailed and rerailed by carrier officials Mr. H. Paletz and Mr. B. McGee, by blocking and pulling with engine 403 at about 1:03 P. M., CST. This work of rerailling cars belongs to the carmen's craft and was improperly performed by carrier officials.

The Agreement reissued June 15, 1950, as revised, is controlling. This dispute has been handled with all officers of the carrier designated to handle disputes, including the highest officer, all of whom have declined to adjust it.

POSITION OF EMPLOYES: It is respectfully submitted that the provisions of Rule 131 of the current agreement is controlling:

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

Oral hearing is waived unless requested by the Organization in which event the Carrier reserves its right to be heard.

(Exhibits not reproduced.)

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.

Petitioner's complaint is that two of Carrier's officials, Assistant Superintendent Paletz and Trainmaster Magee, assisted a yard engine crew in rerailling a car at the Gary Mill Yard. It does not object to the use of the yard crew in this instance but insists that carmen and not the two officials should have been called to assist the crew.

In line with their regular duties, Paletz and Magee went to the scene of the derailment and determined that the car could be rerailed by the yard crew without outside help. There is insufficient evidence to establish that Paletz and Magee did more than act in their normal supervisory capacities in the rerailling operation. Neither Mr. Fonseca, a carman whose statement is emphasized by Petitioner, nor any other witness has presented a sufficiently detailed account to show exactly what duties the officials actually performed in connection with the rerailling of the car. The evidence is not enough, in the face of Carrier's denials and explanations, to establish the claim.

Accordingly, the claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1967.

LABOR MEMBERS' DISSENT TO AWARD NO. 5226

Rule 131 of the current agreement reads in pertinent part:

"When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will, if necessary,

accompany outfit. For wrecks or derailments within yard limits sufficient carmen will be called to perform the work."

The agreement dated July 21, 1961 states in pertinent part:

" * * * however, should such crews (yard crews) require assistance, sufficient carmen would be called upon * * * "

The referee stated in his findings that " * * * The evidence is not enough, in the face of Carrier's denials and explanations, to establish the claim.

* * * * *

Carrier's Exhibit J is a time slip from three crew members for two hours' pay (approved for payment by the foreman) for carrying blocking for the officials named in the dispute (not for rerailling cars). The actual blocking, setting and securing the reraillers and the cable used to pull the car properly anchored to the car and locomotive requires some dexterity. Employee's Exhibit B is a statement from a reliable employe who stated that he was an eyewitness of the two officials rerailling the car involved in this dispute.

We think that the referee failed to properly evaluate the evidence presented in this case, causing Award No. 5226 to be palpably erroneous.

O. W. Wertz
D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger