Award No. 6177
Docket No. 6053
2-BN(SP&S)-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jesse Simons when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

BURLINGTON NORTHERN, INC.
(Formerly Spokane, Portland and Seattle Railway Company)

DISPUTE: CLAIM OF EMPLOYES:

1. That in violation of the current Agreement, the Carrier improperly assigned a working foreman, a section foreman and section crew men to perform carmen's work of rerailing one gondola car and four Diesel units at Gateway, Washington on January 26, 1969.

2. That accordingly, the Carrier be ordered to additionally compensate Carmen K. E. Manley, D. V. DeLong, E. S. Schulte and W. H. Evans for seventeen (17) hours each at time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: The Burlington Northern, Inc. (formerly Spokane, Portland and Seattle Railway Company), hereinafter referred to as the carrier, employs Carmen K. E. Manley, D. V. DeLong, E. S. Schulte and W. H. Evans, hereinafter referred to as the claimants, at Vancouver, Washington.

The Claimants are regularly assigned wrecking crew members of the Vancouver, Washington wrecking crew. Carrier maintains a wrecking outfit at Wishram, Washington, but no wrecking crew. Whenever the Wishram wrecker is called out the Vancouver wrecking crew is called and transported to the scene of the derailment by carrier bus or truck. This practice has been in effect since 1958 when carrier transferred carmen forces previously assigned at Wisham to Vancouver.

Two derailments occurred at Gateway, Washington on January 25, 1969. The first derailment occurred at about 3:45 P. M. involving one gondola car and the second derailment occurred about 9:50 P. M., involving four Diesel units. On the following day, January 26, 1969, the carrier assigned the Working Foreman from Bend, Oregon and the Gateway Section Foreman and crew to perform the rerailing work resulting from the derailments. They completed the rerailing service at 5:30 P. M. on that date.

"* * * the rerailing of locomotives and cars is not the exclusive work of carmen when a wrecker is not called or needed * * * the actual crew must be called only when the outfit, or wrecker, is called and that * * * is a matter to be determined by the Carrier."

In the light of the complete record as set forth herein, the carrier is firmly of the opinion that the claim of the employes is devoid of merit, logic or contractual substance, and should, therefore, 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 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.

This is a claim that Carrier, in violation of Rules 34 and 67, assigned a working foreman, a section foreman, and section crew men on January 26, 1969 to rerail one Gondola car and four Diesel Units at Gateway, Washington. The remedy sought for said alleged violation is 17 hours' compensation at the time and one-half rate for carmen K. Manley, D. V. DeLong, E. S. Schulte and W. H. Evans, all members of the Wrecking Crew, located at Vancouver, Washington.

Pertinent sections of the aforementioned rules are cited below:

"RULE 34.

PERFORMANCE OF WORK

". . . none but mechanics or their apprentices regularly employed as such shall do mechanics' work as per special rules of such craft. . . ."

"RULE 67. WRECKING CREWS

"Regularly assigned Wrecking Crews, including engineers, will be composed of carmen, when sufficient carmen are available . . . when Wrecking Crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. . . ."

Uncontested in this dispute are the following pertinent facts:

1. On the afternoon and late evening of January 25, 1969, there occurred derailment of one Gondola car and four Diesel Units at Gateway, Oregon.

2. The "Wrecking Outfit" was at Wishram, 93 miles from Gateway.

3. There were blizzard conditions prevailing which caused Carrier to decide to not try to move the Wrecking Outfit to Gateway.

4. The "Wrecking Crew" is located in Vancouver, 96 miles west of Wishram and 100 miles from Gateway.

5. The claimants, members of the Wrecking Crew, were called to report at 8:30 A. M., January 26, 1969, their assigned rest days, and were told to prepare to depart for the scene of derailment, which direction to depart was subsequently cancelled, the claimants being paid four hours, plus the prep hour provided for in Rule 12.

6. Cancellation on January 26, 1969 of the order sending the Vancouver based Wrecking Crew to Gateway, was occasioned by the fact the Carrier had received information on that day that the Gateway section crew had achieved the following:

   (a) at 2:00 A. M., January 26, 1969, rerailed first Diesel Unit;

   (b) at 2:30 A. M., January 26, 1969, rerailed second Diesel Unit;

   (c) at 10:00 A. M., January 26, 1969, rerailed third Diesel Unit;

   (d) at 5:30 P. M., January 26, 1969, rerailed fourth Diesel Unit.

   (e) There is no evidence of probative value in this record that a working Foreman or Section Foreman performed any rerailing work as alleged.

7. In the late evening hours of January 25, 1969, the Traveling Engineer tried to drive by auto from Vancouver to Gateway, but was compelled by the blizzard to return. Some time later, and on January 25, 1969, the Traveling Engineer and the Wrecking Foreman again left Vancouver by auto and arrived finally at the scene of the derailment at 1:30 P. M. on January 26, 1969.

The decision in this dispute turns, in the first instance, on the issue of whether, pursuant to Rules 34 and 67, the Carrier was obligated to (1) either send the Vancouver Wrecking Crew to the derailment scene; or (2) failing that, to compensate the crew for the work they would have performed, had they been sent. Decision on the above, in turn, depends on whether or not Rules 34 and 67 do in fact accord exclusive jurisdiction to the Vancouver Wrecking Crew to perform all rerailing work, and, if so, do said rules require Carrier to assign said crew to said derailments, and, correlatively, if such Rules do confer such exclusive jurisdiction, does it bar other employes from performing duties regarding derailing or rerailing of derailed trains, **in the absence of the use of the wrecking outfit.**

The above issue has been submitted to the Board on innumerable previous occasions, and both parties have submitted past decisions which they believe controlling, and on which they ground their respective positions.

This Board has carefully reviewed all the past decisions submitted to it, and, having done so, has the following comments to make with regard to them.

Reviewed first are those awards cited by the Organization.

The fact situation in the disputes disposed of in the below list of Awards differs radically from the fact situation in the instant dispute, in that a wrecking outfit was used and a wrecking crew was assigned and, therefore, said Awards (listed below) are neither pertinent or controlling in the instant dispute:

Award No. 424 – 1940
Award No. 1298 – Gilden, Referee
Award No. 1327 – Donaldson, Referee
Award No. 1559 – 1952 – Wenke, Referee
Award No. 1678 – 1953
Award No. 2385 – 1956 – Wenke, Referee
Award No. 2700 – 1957 – Begley, Referee
Award No. 3190 – 1959 – Whiting, Referee
Award No. 3259 – 1959 – Hornbeck, Referee
Award No. 3864 – 1961 – Johnson, Referee
Award No. 4222 – 1963 – Johnson, Referee
Award No. 4571 – 1964 – McDonald, Referee
Award No. 4675 – 1965 – Daly, Referee
Award No. 4836 – 1966 – Johnson, Referee
Award No. 4838 – 1966 – Johnson, Referee
Award No. 4840 – 1966 – Johnson, Referee
Award No. 5023 – 1967 – Harwood, Referee
Award No. 5696 – 1969 – Ives, Referee

The fact situation in the disputes disposed of in the below list of awards differ from the fact situation in the instant dispute for the reasons indicated below, and, therefore, said awards are neither pertinent or controlling in the instant dispute.

AWARD 5492 – 1968 – Knox, Referee

—two wrecking outfits or cranes dispatched to derailment, and two wrecking crews.

AWARD 424 – 1940

—the wrecking crew was dispatched to the derailment scene.

—no derailment occurred, merely replacement of broken knuckle within the yard or terminal.

AWARD 4835 – 1966 – H. A. Johnson, Referee

—seems to be on point, but despite careful reading and analysis, this Award is not within the understanding of the Board, particularly the Decision Section, which sustained 'Claim 1' which appears to be merely a statement that Rules 119 and 120 were violated; but denied 'Claim 2' which specified the remedy sought for the alleged violation. Therefore, this decision is not viewed as pertinent or controlling in the instant dispute.

In Award No. 6113, this Board, with Referee participating, stated:

"Reference is made to 3rd Division Award No. 10911, which succinctly states the following:

> 'When the Division has previously considered and disposed of a dispute involving the same parties, same rule and similar facts presenting the same issues as is now before the Division, a prior decision would control. Any other standard would lead to chaos.
>
> . . . in the absence of any showing that [previous awards are patently erroneous (and no such showing was made)] we must follow them.'

The above citation notes correctly that chaos would be the consequence absent recognition by the parties and the Board of the impact and role of prior awards.

However, the Board also notes that it can contribute to expeditious and orderly resolution of grievances arising under the Agreements, by making every effort to assure that awards construing and applying Agreement terms to particular fact situations, have a minimum of inconsistency and maximum of consistency. The parties have a right to rely on such a postulate, and, in fact, need such stability so as to effectively implement and administer the agreements with a minimum of costly and time consuming litigation of disputes. Finally, achieving the goal of awards which are harmonious and consistent in the interpretation and application of the Agreement(s), is further justified on the grounds that it will tend to improve the labor management relationship to the extent of reducing friction, contention and misunderstanding.

When such a goal has been achieved, as it has in the instant issues under consideration, continual resort to Board procedures merely serves to clutter the calendar and delay hearings and awards in matters now pending."

The above citation applies with compelling force to the instant dispute.

This Board is dismayed that it is compelled to consider a dispute over issues which have been adjudicated innumerable times over two decades. The Board, though sorely tempted, will not, in the interests of brevity, cite the pertinent portions of the awards listed below, all of which in clear, unambiguous and definitive manner, repeatedly establish in decisive and controlling language, among other matters, the following:

1. That derailment work outside a yard is not exclusively the work of Carmen.

2. That a wrecking crew need not be assigned to a derailment when no wrecking outfit is used.

Thus, the Board concludes on the grounds set forth in the Awards listed below, that the instant claim of violation by the Organization is groundless, and, for ready reference, the awards referred to above are as follows:

Award No. 1719 – 1953
Award No. 1757 – 1954 – Carter, Referee
Award No. 2049 – 1956 – Douglas, Referee
Award No. 2050 – 1956 – Douglas, Referee
Award No. 2343 – 1956 – Carter, Referee
Award No. 2208 – 1956 – Carter, Referee
Award No. 4190 – 1963 – Anrod, Referee
Award No. 4362 – 1963 – Anrod, Referee
Award No. 4415 – 1964 – McDonald, Referee
Award No. 4821 – 1966 – Johnson, Referee
Award No. 4848 – 1966 – McMahon, Referee
Award No. 4931 – 1966 – Hall, Referee
Award No. 5306 – 1967 – Weston, Referee

Awards 3257, 3265, 5438, 5637, 5608 and 5802, all cited by the Carrier, do not precisely deal with the specific fact situation in the instant matter. Thus, they are not relied on by this Board in this Award, though it is noted that much of the reasoning, analyses and conclusions contained in said Awards are pertinent and relevant to the issues under consideration.

The Board confesses its bewilderment that the issues presented herein are before it for still another Award. The Board cannot formulate any reasonable explanation as to why this grievance was not shunted aside at some earlier point in the procedures for processing claimed violations of agreements in view of the body of Awards previously cited.

Repetitious readjudication of issues tends to damage and undermine the role of the Adjustment Board and the grievance procedure. It can have the ultimate consequences of eroding and casting into disrepute the vital functions of grievance processing which needs to be performed, namely, preservation of employe rights under the agreements and minimization of friction in the labor–management relationship.

Gresham's Law, that bad money drives out good, applies to grievance processing. However, the consequences of continuing, and continuously processing grievances up to the Adjustment Board and the emergence of a deadlock requiring participation of a Referee, concerning issues which have been disposed of in a decisive manner such as is manifest in the body of decisions previously cited, must necessarily result in the frustration of unwarranted expectations and unjustified hopes held by the grievants, who then, out of such frustration, may very well come to regard the grievance procedures as void of meaning, and may, therefore, downgrade the existing procedure and then tend to look for other means of resolving disputes.

The Board firmly believes that some means must be developed to divert grievances, such as the instant one, at some point in the elaborate trek they take, extending over two-year periods, wherein there are numerous meetings and exchanges of letters, docketing, preparation and presentation of briefs, and reply briefs. Such diversion would have been warranted in this particular case when surely somewhere along the line, it must have been known to at least some of those participating in the processing of this grievance, what the outcome would certainly be. Development of a procedure providing for diversion or resolution of grievances on issues already put to rest by prior Awards is justified in that it will serve the interests of preserving the integrity of the grievance procedures and the Adjustment Board.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October, 1971.

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