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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6361
Docket No. 6152
2-L&A-CM-'72

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 3, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Louisiana & Arkansas Railway Company

Dispute: Claim of Employees:

1. That on January 31, 1970, at Deramus Yard, Shreveport, Louisiana, the Carrier violated the controlling agreement by using Section Foreman Otto P. Turner and a crew of six (6) sectionmen to reraill KCS 1024.
2. That, accordingly, the Carrier be ordered to compensate Car Inspector O. H. Jones eight (8) hours at penalty rate for January 31, 1970.

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.

Deramus Yard, Shreveport, Louisiana is Carrier's largest yard. Car derailments occur frequently and there is ample evidence that other than carmen are used in cases where wrecking crews and mechanical equipment are not required. Carrier's Submission, Exhibits 3 and 4 are affidavits of the Terminal Trainmaster with 27 years experience and of the General Car Foreman with more than 37 years experience who each state that other than carmen have often been used within the yard in simple reraillment situations. Exhibits 6 and 7 are Signal 66 Reports as evidence that the crews did the rerailling. Exhibits 8-10 are not considered because objection is made by the Organization that these were not made part of the record while the claim was being handled on the property, Employees' Rebuttal p.1, (Circular No. 1, NRAB Rules of Procedure).

The Organization claims that the carman on duty should have been used, citing the Agreement Rules 95, 28 and 90, Rule 95 is entitled, Wrecking Crews.

It defines the crew as composed of carmen with the right to use men of any class in addition, when needed. Second Division Award 4674 referred to, presents a grammatical analysis of the sentence structure of the third paragraph of Rule 95 to justify the claim that only carmen will be used, sufficient to perform the work, within yard limits. Rules should be applied according to their headings. We find the third paragraph of Rule 95 to mean that outside the yard limits the regularly assigned wrecking crew will be used but within yard limits the work may be done by other than the regularly assigned wrecking crew to wit, a sufficient number of carmen.

Rule 95 is not the scope rule for carmen, nor does Rule 95 specifically restrict the work to carmen. Rule 28 does not restrict this work to carmen. Rule 90 does not refer to rerailing of cars and wrecks. The Organization relies upon that part of Rule 90 which states, "and all other work generally recognized as carmen's work." It argues from this that it is as though the words "wrecks or derailments" were written into the Rule. This assumption could be argued if past practice established the fact. The prevailing practice does not restrict the rerailing of cars within yard limits exclusively to carmen. Since the Rules cited by the Organization do not specifically make this the exclusive work of carmen, there is room for interpretation and construction of the language in favor of the prevailing practice. This finding is consistent with the reasoning of many prior Awards including Second Division Awards No. 1763, 2343, 4337, 4901, 5812 and 5860.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July, 1972.