

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

- (a) That on April 14, 1974 Carman on the Wrecking Crew from Springfield, Missouri removed crater pan from #3 pair of wheels and burned off the pinion from derailed locomotive #400. This is specifically and undisputed work under the Machinist's Classification of Work Rule.
- (b) That accordingly, Carrier be ordered to pay Machinists Jay Robinson and Jimmy Haynes for eight (8) hours pay at penalty rate each, account of violation of Rules 31(a) and 58.

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.

Train QLA derailed some three miles south of Mansfield, Missouri, at approximately 1:45 A.M. on April 14, 1974. It is a northbound train running between Memphis, Tennessee, and Springfield, Missouri, and is composed of four locomotive units (units 920, 850, 910 and 400, in that order) and fifty-four cars. All four locomotive units and 28 cars in Train QLA were derailed. The wrecking outfit from Springfield, a distance of forty-six miles was ordered at 3:30 A.M., as well as the Carrier's wrecking outfit from Memphis and a unit of the Hulcher Wrecking Service. The Springfield Wrecker arrived at the derailment at 8:20 A.M. and started rerailing the locomotive units. As each unit was rerailed, it was necessary to move the unit into Mansfield with the wrecking equipment. At approximately 1:40 P.M. locomotive unit 400 was rerailed, at which time it was found that the No. 3 wheels were locked. The wrecking crew tried to free the wheels by moving the unit forward and backward for approximately twenty minutes without success. As a result a member of the wrecking crew removed the traction motor gear case pan and burned off the pinion enabling the unit to be moved to Mansfield. This work required approximately one hour and fifteen minutes. This work is the basis for the dispute before this Board.

The Organization contends that the Carrier violated the Agreement in assigning a Carman to burn off the pinion because such work is exclusively machinist work and Rule 58 of the Agreement applies. Rule 58 states:

"Work at Wrecks--Rule 58

In cases of accident where engines are disabled, the report will show the nature of the damage; and if machinist's work is to be done, machinists will be sent from the most convenient point."

The Carrier contended on the property and before this Board that the derailment occurred on a heavily travelled segment of Carrier's main line between Memphis and Springfield causing severe blockage of the mainline. The Carrier contends the situation was an emergency of dire proportions and that it therefore was entitled to use its managerial prerogative to deal with the emergency in order to reopen the main line.

Both the Organization and Carrier make a number of other contentions which we need not reach since the contention based on emergency determines the outcome of this dispute.

The Carrier has the burden of proving that an emergency existed. We find that an emergency clearly existed in the instant case. With four locomotives and 28 cars derailed causing blockage of the Carrier's main line between Memphis and Springfield, a compelling emergency did exist.

The work in question was performed at the height of the emergency. The Springfield Wrecker could not get to the remaining wrecked equipment until locomotive unit 400 was moved to Mansfield.

We find that the Carrier in the instant case did not abuse its managerial prerogative under the circumstances of the instant case. We find that there was no indication that there was a need for the services of any other craft other than the normal wrecking crew when the Springfield Wrecker was called. We find that there was no way to foresee the necessity of cutting the armature shaft or burning off the pinion gear until locomotive unit 400 was rerailed and an attempt was made to move it. The wrecking crew indeed attempted to free the No. 3 wheels by moving the unit forward and backwards for approximately 20 minutes. It was as a last resort that the burning off of the pinion gear was undertaken. We find that to have called a machinist from Springfield to cut the pinion gear would have created a serious delay at the scene of the derailment. We can see no abuse of the Carrier's managerial discretion in the instant case.

The Machinists' Organization contends that the Carrier was well aware that a Machinist would be needed on this derailment and thus the Carrier should have taken a Machinist along with the Wrecker. We find this contention contrary to the record. We find no evidence that the mere fact that a locomotive or locomotives have been derailed creates such certainty or such a high degree of

probability that Machinists' work will be required that the Carrier should be required to take a Machinist along with the Wrecker. Indeed three of the units were rerailed in the usual course of wrecking service; and the problem on the fourth was not discovered until the unit was rerailed. Further, Rule 58 sets out no requirement that a Machinist be sent out with a wrecker when a locomotive(s) is derailed.

The Organization argues that if the Carrier is allowed to use the wrecking crew (Carmen) to do Machinists' work in an emergency then such an award negates Rule 58 and has the effect of removing Rule 58 from the Agreement. We disagree. First of all not every wreck is an emergency. Secondly, an emergency defense is operative only while the emergency continues--while the main line is blocked. In wrecking service, very often the emergency is over long before the wrecking crew is secured. Thirdly, even during an emergency the Carrier cannot abuse its managerial discretion. For example, if it was evident (which it was not in the instant case) that a Machinist was needed to do Machinist work and such work could be held up without hindering the progress of clearing the derailment while a Machinist was being sent from the most convenient point, then such a circumstance, even though an emergency existed, would require the Machinist be called or be an abuse of Managerial discretion.

The Organization contends that a Machinist was necessary at the site of the derailment if for no other reason than the unit(s) would require an inspection by a Machinist prior to being moved (Employes' Submission p. 3). This contention was not made on the property and is not sufficiently developed in the Employes' Submission for this Board to understand the full ramifications of this contention. The Organization has the burden of proving its contentions with sufficient detail for this Board to make a rational decision. We find that this has not been done in regards to this contention.

We must deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July, 1976.