

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

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the controlling agreement, when other than Carmen assisted in rerailling Engine No. 198, Tampa, Florida, December 3, 1975.
2. That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Carmen B. Ayers, O. J. Samuels and W. T. Carpenter, Jr., in the amount of three and one half (3½) hours each at their overtime rate of pay for said violation.

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.

On December 3, 1975 a Yard Engine was derailed in Carrier's Yeoman Yard at about 3:35 A.M. Two Foremen and a Clerk got some blocks and assisted the Yard Crew in attempts to reraill the engine. They succeeded in getting one wheel on the tracks. At 5:45 A.M. two Carmen were called and together with the engine crew rerailled the engine at 6:00 A.M. Petitioner alleges that Carmen should have been called to perform the work accomplished by the two Foremen and Clerk.

Rule 103 is relied on by the Organization. That Rule provides, in pertinent part:

"RULE 103 - WRECKING CREWS

- (a) Regularly assigned wrecking crews, including engineers and firemen, will be composed of carmen and will be paid for such service under Rule 8.

"(b) 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.

(c) Within yard limits, when the wrecker is used, the necessary number of members of the wrecking crew will be called to perform the work. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work.

(d) When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.

xxx."

Carrier argues that Rule 103 applies to Wrecker Service and is not authority for Petitioner's position. Further, Carrier avers that the work in question is not the exclusive work of Carmen, particularly since no wrecker was used. Carrier also points to past instances in which employees other than Carmen have been used in similar circumstances and claims were made and subsequently abandoned by Petitioner.

The Organization argues that the clear language of Rule 103(c) is controlling in this dispute. While agreeing that yard crews have the right to assist or accomplish rewiring of cars or engines, Petitioner insists that no practice can negate the intent and unambiguous language of the agreement: Rule 103(c). Past practice, according to Petitioner is not relevant since it was never agreed to or condoned by the Organization and most of the instances cited by Carrier took place under a predecessor agreement with markedly different contractual language.

Both parties have cited a host of awards dealing with the problem in this dispute. The issue has been before this Board for well over forty years. In Award No. 222, without Referee, this Board held:

"The rule involved reads as follows:

'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. For wrecks or derailments within yard limits, sufficient carmen and helpers will be called to perform the work, if available.'

The derailment occurred within yard limits.

"Although a minor derailment, a twisted brake beam prevented the crew from replacing the pair of wheels.

The roundhouse foreman was called upon for assistance; he, together with one machinist, one machinist helper and two laborers, with necessary cutting torch and equipment, proceeded to the point of derailment and performed the work necessary to re-track the locomotive tender.

It is the opinion of the Division that Rule 120 contemplates, even in the case of a minor derailment, that when yard forces are unable to correct the condition, and it becomes necessary to call other employees and equipment, that the work then belongs to the carmen and that sufficient carmen and their helpers shall be called to perform the work, if available."

This Board has taken a similar position in Awards 1442, 2908, 6447 and 7214, among others. We find that those awards are the better reasoned than those cited by Carrier (including Awards 2343 and 4337). Awards 6200 and 6454, involving the same parties, have been cited. Award 6200 was a sustaining award and 6454 was a denial award both dealing with Rule 103(c). However, both of those awards dealt with the problem of the use of wrecking equipment and wrecking crews and are not analogous to the dispute herein.

It is our conclusion, consistent with the reasoning in Award 222 and following awards, that the language of Rule 103(c) supports Petitioner's position. By that clear language Carmen should have been called to assist the yard crew in the re-railing process from the beginning, not merely at the last step, regardless of the simple nature of the tasks involved. From the facts adduced, however, the compensation claimed should only be for two hours and ten minutes at pro rata rate.

A W A R D

Claim sustained to the extent indicated above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By [Signature]
Honorable Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July, 1978.