Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9974
SECOND DIVISION Docket No. 9039-T
2-C&NW-CM-'84

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the
(United States and Canada, AFL-CIO
(
(The Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. Carman R. F. Gibson, Green Bay, Wisconsin, was deprived of wages to which he is contractually entitled in the amount of 17 hours and forty-five minutes pay at the pro rata rate, account the Chicago and North Western Transportation Company called mechanics-in-charge to perform carmen's work at derailments at Cleveland and Menash, Wisconsin on July 12, 17, and 19, 1979.

2. That the Chicago and North Western Transportation Company be ordered to compensate Carman R. F. Gilson in the amount of 17 hours and forty-five minutes pay at the pro rata rate.

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 employes 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.

As third parties at interest, the International Association of Machinists & Aerospace Workers and the International Brotherhood of Electrical Workers filed submissions stating their positions in this matter.

As its submission to the Board, the Carrier provided a copy of its submission in the dispute leading to Award No. 9198 (Carlton E.Sickles). That award sustained the claim on procedural grounds having nothing to do with the merits of the dispute. Thus, the underlying issue which was not reached in Award No. 9198 remains for resolution here.

The Carrier's response of November 8, 1979 in the claim handling procedure covers the facts of the situation, along with the Carrier's basic arguments as to its position. This reads in pertinent part as follows:

"On the three dates involved in this case, July 12, 17 and 19, the carrier used Berg Corporation to re-rail cars which had been derailed at the locations you have listed. In fulfilling the terms of the contract, the carrier used the Mechanics-in-Charge from Manitowoc and Appleton. Both of these positions are covered by the Federated Crafts Agreement and both are assigned to perform re-railing functions. Also, a Carman assigned to the "400" Truck from Green Bay was used. No employees were used who did not fall under the jurisdiction of the Federated Crafts Agreement. Berg Corporation did not have any groundmen, only machine operators. The Carrier did furnish the required two groundmen. There was no necessity to send a carman from Green Bay when Federated Craft employees at Manitowoc and Appletown were in much closer proximity and were qualified to perform the service required."

The February 10, 1976 Memorandum of Agreement reads in pertinent part:

"(a) At wrecks or derailments where the Carrier deems it necessary to employ equipment of outside contractors such as cranes, bulldozers, etc., to clear up wrecks or derailments, the contractor may furnish the opertors of such equipment provided a minimum of two carmen employed by the C&NWT are utilized in wrecking service at the scene during the hours the contractor's equipment is operated. In the event additional men are required they will be taken from the Carmen class."

This establishes the Carrier's requirement to furnish at least two Carmen for the cited instances of wrecking services. The dispute is simply whether or not the Carrier was entitled to use a Mechanic-in-Charge to perform the service as one of the two Carmen in the wrecking operations.

Mechanics-in-Charge, represented with this Carrier by the Federated Crafts, succeeded to the title of Working Foremen, which had been in use prior to 1939.

Directly applicable here is Rule 29 and interpretations thereof. Rule 29 reads in pertinent part:

"None but mechanics and apprentices regularly employed as such, shall do mechanics' work as per special rules of each craft...

This does not preclude work being performed by car department mechanics-in-charge assigned to outlying points at which the force does not exceed five men, or in train yards."

On May 23, 1939, the Carrier and the Federated Crafts signed a memorandum of Agreement which reads in part:

"It is hereby agreed that agreement of June 28, 1921, covering understandings in respect to rule 29, federated crafts' agreement, is modified or revised, effective June 1, 1939, to provide:

"1. At a point where there are not to exceed five mechanics employed, one mechanic on a shift may be classified as mechanic-in-charge, and compensated at a monthly rate to cover service performed.

2. On a shift where but one mechanic, classified as mechanic-in-charge is employed, he will be permitted to do any and all mechanics work..."

The Organization argues, based on this interpretation, that Mechanics-in-Charge are limited to work at the "point" where they are employed. The Carrier argues that, under the circumstances of Section 2 of the Memorandum of Agreement, a Mechanic-in-Charge is "permitted to do any and all mechanics' work".

There is no demonstrated basis to show that wrecking service should, as an exception, preclude the use of Mechanics-in-Charge to fulfill the required complement of Carmen.

That the Carrier did not act in an arbitrary fashion is indicated by the fact that the Mechanics-in-Charge were drawn from points closer to the wreck sites than would have been the case if the Claimant had been called from Green Bay.

The Organization's reliance on Award NO. 8146 (Dennis), involving the same parties and interpretation of Rule 29, is misplaced. That award concerned principally the abolishment of a job and its being assigned to a Mechanic-in-Charge, to the detriment of the previous holder of the job. No such job creation or abolishment is involved here.

Award No. 7311 (Franden) was also cited by the Organization. This concerned the use of a "Foreman". Assuming for the sake of argument that this is the equivalent of Mechanic-in-Charge, the circumstances in Award No. 7311 concerned the use of a Foreman who traveled to a point where a Carman was "available" for such work. Again, this differs from the instances under review -- where the wrecking situation required all employees to be called to the scene, as contrasted with being assigned to such "point".

Rule 29 and its Understanding do limit the Carrier's right to utilize Mechanics-in-Charge, but such limitation may not be found to extend to the circumstances of this claim. The conditions were not such as to exclude Mechanics-in-Charge from doing "any and all mechanics work". Further, their physical location made them more readily available to the wreck site than other employees from a more distant location.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of June, 1984