

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company, hereinafter referred to as the Carrier, on August 12, 1981 knowingly violated Rules 32, 111(a) and 111(c) of the MP&C Department Agreement, when it used members of other seniority point, Roseville, California, within the Sparks, Nevada yard limits. Further, that the Carrier did not comply with the provisions of Rule 38(b) when it did not give a reason for the denial of claim within the specified time limits.
2. That Mr. R. Flores and E. R. Clabaugh who hold seniority at Sparks, Nevada and were available to perform the rerailing be compensated twelve (12) hours each at the prevailing (sic) time and one half rate of pay as provided for by Rule 15 of the current agreement, as were the men from Roseville, California.

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.

The Claimants involved in this dispute are carmen employed by Carrier at Carrier's Repair Facility at Sparks, Nevada. On date of August 11, 1981, two diesel locomotives derailed near the diesel pit within the Sparks yard. Apparently the equipment available for rerailing these two locomotives at the Sparks yard could not satisfactorily perform the work, accordingly the next day, August 12, 1981, an off track rerailment truck accompanied by two carmen was brought in from Roseville, California and rerailed the two locomotives. Total time involved was about fourteen hours of which about two hours was spent in the actual rerailing operation.

Rule 32 of the MP&C Department reads in part:

"Seniority of each class in a craft shall be confined to the point where they are employed...."

Rule 111(a) and (c) reads in part:

"(a) Regularly assigned relief outfit crews will be composed of freight carmen...."

"(c) When relief outfit is called for derailments... inside the yard limits at home point only the necessary number of regularly assigned crew will accompany the outfit."

The Employees contend that since carmen have only point seniority, and since these derailments took place within the limits of the Sparks yard that the Claimants should have been used to perform this rerail operation instead of carmen from another seniority point.

The Employees also contend that the claim is subject to be sustained for the additional reason that the Superintendent's reply does not fulfill the requirements of Rule 38(b) of the agreement which reads in part:

"...notify whoever filed the claim or grievance...in writing, of the reasons for disallowance. If not so notified, the claim or grievance shall be allowed as presented,..."

The Carrier contends that there has been no violation of Rules 32 or 111 and that the Superintendent's reply to the Local Chairman was in compliance with the provisions of Rule 38(b). Both sides cite numerous awards in alleged support of their positions. We shall deal with the alleged violation of Rule 38(b) first, Carrier's reply to the Local Chairman reads as follows:

"Refer to your letter of September 9, 1981. There is no basis for your claim as stated in your letter, therefore claim is denied in its entirety."

While it would have perhaps been better if the Superintendent in denying the claim would have worded it a little differently perhaps writing something like "There is no basis for your claim under the rules" or "Your claim is not supported by the schedule of rules", nonetheless even worded as it is it does give a reason for denial of the claim, we must rule that the Superintendent's reply did sufficiently comply with Rule 38.

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Award No. 10141
Docket No. 10037
2-SP-CM-'84

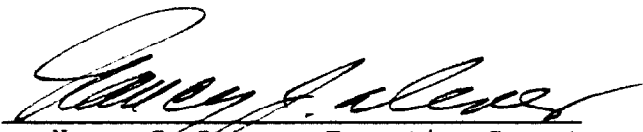
In regards the Employees' other contention that carmen from Sparks yard should have been used in this rerailment instead of carmen from Roseville, since carmen on this road have only point seniority, and since these derailments occurred within the yard limits of the Claimant's home terminal, we will sustain the case for the actual time spent in rerailing these locomotives which is two hours for each of the Claimants, not twelve hours as claimed, and since this Board has ruled on numerous occasions that pay for time not worked is at the straight time rate, not time and one half, we shall not deviate from that.

A W A R D

Claim sustained for two hours compensation for each of the Claimants at straight time rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 31st day of October 1984.