Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10258
SECOND DIVISION Docket No. 9933-T
2-B&O-CM-'85

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(The Baltimore and Ohio Co.

Dispute: Claim of Employes:

No. 1. That Carrier violated the terms of the controlling Agreement when on the date of April 8, 1981, they allowed a Car Foreman and trackman, to perform rerailing work, within the yard limits at Cowen, W. Va., C&O Hopper car 144101, in violation of Rule 142 of the controlling Agreement, and further allowed the trackman to utilize oxyacetylene cutting torch during this operation, in violation of Rule 138, Carmens Special Rules, Classification of Work. Carmen were on duty at Cowen to perform the work in question, and not so utilized, thus, allowing other than Carmen to perform the above referred to work, places Carrier in further violation of the controlling Agreement, Rule 29.

No. 2. That accordingly, Carrier be ordered to compensate Claimants for all time lost account this violation; five hours' pay each at the straight-time rate, Carmen, Claimants, R. E. Miller and B. Jenkins.

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.

On April 8, 1981, an empty C & D Hopper Car, 144101, derailed at No. 1 Yard District Turn, Cowen Yard as a yard crew was shoving empties on the wye track. There were two Carmen on duty at Cowen, West Virginia that day, although they were approximately 35 miles away working on other equipment. The Carrier used available forces, that is, the yard crew to rerail the car. The Organization filed this claim contending that the two Claimants who were on furlough status should have been recalled to perform the work.

The record reflects a single car derailed preventing all movement on the Ready Track. The yard crew, with the assistance of the Car Foreman, used blocks and rerailed the car in one hour.

The Carrier contends that this type of work does not accrue exclusively to the Carmen's Craft. The Carrier asserts that a minor derailment of this nature which does not justify the necessity of a wrecking crew has been performed by various Crafts. Furthermore, the Carrier claims that the Organization has failed to demonstrate that this type of rerailing work has been exclusively performed by Carmen on a system wide basis.

The Organization takes the position that all rerailing is the exclusive work of Carmen regardless of the location and nature of the work. The Carrier, on the other hand, by allowing other Crafts to perform such work is violating the Agreement.

The Organization's claim of exclusivity of work, in this case, is overbroad. Many Awards of this Board have uniformly held unless a wrecking crew is called for wrecks or derailments such work does not accrue specifically and exclusively to the Carmen's Craft. In Second Division Award 5860, the Board cited with approval the holding in Second Division Award 4337 as follows:

> "When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work.
>
> From the face of Rule 142 it is apparent that two sentences supplement one another. The first sentence related to wrecks or derailments outside of yard limits and the second to wrecks or derailments within yard limits. The entire rule clearly deals with the composition of makeup crews and thus is applicable only when such wrecking crews are called.
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> In the instant case, no wrecking crew was ever called. Hence, the work performed in rerailing the car in question did not exclusively belong to carmen under Rule 142. In addition, no wrecking equipment was used, the operation of which would possibly have belonged to carmen under Rule 141 of the labor agreement."

The facts of the record in this case indicate that a wrecking crew was not called because the routine nature of the derailment did not require the assistance of a wrecking crew. Thus, this Board concludes that the work in question does not belong exclusively to Carmen. The prevailing practice on this property is in harmony with our decision as indicated by the record. It is common practice in routine situations such as is present in this case to have various Crafts perform the work. See Second Division Awards 3257, 3265, 3859, 4337, 5812, and 6361 among others.

The Organization's contention that additional rule violations occurred because of the Car Foreman's participation and the truckman's use of an oxyacetylene torch during the rerailing operation is not well founded. It is well settled that the work involved is not controlling in determining a violation. The controlling factor is whether or not a wrecking crew was called. Many claims have been filed by this Organization because train crews, yard crews, laborers, maintenance of way personnel or supervisors participated in rerailing operations and this Board has denied such claims.

The Board holds, in this case, that Rule 29 (b) permits a Foreman to perform the work in question in the exercise of his duties. Rule 29 (b) states that, "it does not prohibit foremen in the exercise of their duties to perform work".

Under all of the circumstances and in light of the substantial precedent already established by this Board on the issue, we must deny the claim.

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 6th day of February 1985.