

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern Railroad violated the terms of the controlling agreement, particularly Rules 27(a), 83 and 86, when they relieved the Spokane wrecking crew from service and assigned Section Laborers to complete such wrecking duties at the Bonners Ferry, Idaho derailment November 20, 1980.
2. That accordingly, the Burlington Northern Railroad be ordered to additionally compensate Spokane wrecking crew members J. J. Sherwin, J. E. South, R. G. Mark, J. C. Shenefelt, L. J. Stitt, G. A. Sturmer and C. L. Empson in the amount of sixteen (16) hours' pay each, at the wrecking service rate of time and one-half (1 1/2), for service claimed on November 20, 1980.

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 November 19, 1980, a derailment occurred on an industry track at Bonners Ferry, Idaho, which involved BN Locomotive 6018 and four (4) freight cars. Carrier dispatched its Spokane-Parkwater wrecker outfit to the scene and the wrecking crew rerailed the locomotive and cleared the track, but was sent back to its home point without rerailing the four (4) freight cars. Carrier relieved the wrecking crew because of its belief that the condition of the industry track was poor and on November 20, 1980, after the track was repaired, it permitted and assigned train crews to rerail the freight cars with the assistance of the local section crew. The Organization contested this action and filed a claim on December 18, 1980.

In defense of its petition, the Organization contends that Carrier violated Rules 27(a), 83 and 86 of the Controlling Agreement since, as it argues, once the wrecking crew was dispatched to the derailment site, the wrecking service work accrued to the crew. It asserts that Rule 86(b) in particular, unmistakably requires that once a wrecking crew is called to perform wrecking service, the work belongs to the crew. It cited Second Division Award Nos. 1298, 5894 and 6030, et al, as controlling. Moreover, the Organization argues that in view of the violation, the affected Carmen are entitled to time and one-half compensation in accordance with Rule 7(c). Rules 86(b) and 7(c) are referenced as follows:

"86(b). When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within the yard limits, sufficient carmen will be called to perform the work."

"7(c). Wrecking service employees will be paid at the rate of time and one-half for all time working, waiting or traveling from the time called to leave home station until their return thereto, except when relieved for rest periods. Rest periods shall be for not less than five (5) hours nor more than eight (8) hours, and shall not be given before going to work nor after all work is completed."

Carrier contends that Rule 86(b) does not require the use of wrecking crews, but rather provides that when they are called to perform wrecking service outside yard limits, the crew will accompany the wrecker outfit. It argues that derailment work or wrecking service is not exclusively reserved to the Carmen, as evidenced by a textual analysis of Rules 27(a) and 83; and notes that the word "when" in Rule 86(b) indicates that such work is non-exclusive. It avers that Second Division Award No. 7526 pointedly supports its interpretative position since the Board held that other than Carmen may rerail a locomotive or cars when a wrecker is not needed. As to its application, in this instance, Carrier asserts that when it determined a wrecking crew was not needed to rerail the four (4) freight cars on November 20, 1980, it was permissible, and in fact, a reasonable act of business judgment to send the wrecker outfit back to Spokane. It further maintains that even assuming a violation occurred, the monetary compensation requested is excessive since payment for work not performed is compensable at the straight time rate when a violation occurs. It cited Second Division Award Nos. 6845 and 7356 involving the same parties as dispositive of this point.

In our review of this case, we concur with the Organization's position that Rule 86(b) was violated when Carrier assigned forces other than the wrecking crew to rerail the four (4) freight cars on November 20, 1980. We agree with Carrier that such work is not exclusive when a wrecker outfit is not called to perform wrecking service work, but consistent with our decisional holdings, once the wrecking outfit is called, the work belongs to the wrecking crew. (See Second Division Award Nos. 1298, 5894 and 6030 et al.) The purposeful use of the word "when" in Rule 86(b) and the construction of its meaning and application by Second Division clearly establishes that wrecking service work belongs to Carmen when the wrecking crew is called. The decision to call a wrecking outfit is singularly Carrier's right, but once the outfit is called, the wrecking crew is entitled to perform the wrecking service work. This interpretative point was implicitly recognized in a very recent Second Division Award No. 10258, wherein the Board in part noted:

"It is well settled that the work involved is controlling in determining a violation. The controlling factor is whether or not a wrecking crew was called."

Since a wrecking crew was called on November 19, 1980 to perform wrecking service at the Bonners Ferry derailment site, it should have rerailed the four (4) freight cars on November 20, 1980. By using other forces to perform this work, Carrier violated the Agreement. Accordingly, we will sustain the claim, but only at the straight time rate. This is consistent with our monetary determinations in Second Division Award Nos. 10010 and 10153 involving the same parties and the same rules.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1985.