

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
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated rules 25 (a) and 102, October 14, 1982, when Mr. P. Crimm, Assistant Trainmaster, performed the necessary ground work in rerailling freight car MP 651219 in Great Southwest Industrial Area within the yard limits of Fort Worth, Texas.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman G. T. Baxter in the amount of a call (four (4) hours straight time) account of this 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 employee or employees involved in this dispute are respectively carrier and employees 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 instant dispute evolves around a factual evidentiary issue: Whether the Assistant Trainmaster did the disputed work.

On October 9, 1982, the parties are in agreement that a single freight car derailed at a train yard in Fort Worth. Two Carmen sent to reraill the car on October 10 decided the assistance of a locomotive was required. On October 14 another crew succeeded in rerailling the car.

The Carrier's position is that the crew worked 8 hours and that the Assistant Trainmaster present only supervised the operation.

The Organization did not argue that the yard crew should not perform the work, but that the Trainmaster present must have performed some of the disputed work.

The Organization's claim of exclusivity of Carmen's work relies on Rule 25 (a), Rule 102 and Rule 105 which provide, in pertinent part:

"Rule 102. Carmen Classification of Work

"Carmen's work, including regular and helper apprentices, shall consist of building, maintaining, painting, upholstering and inspecting of all passenger and freight cars, both wood and steel."

"Rule 105.

"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, a sufficient number of carmen and helpers on duty will be used to perform the work."

"Rule 25. Assignment of Work

"(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft."

There are many prior Awards (see 10415, 6455, 10091 and 10258) wherein the Board held that an Organization must show by strong and conclusive evidence that it is entitled to the work by specific rule language or, that the work traditionally and exclusively belongs to Carmen on a system-wide basis by past practice.

The Board has thoroughly reviewed the evidence in this case and it finds that the burden of proof rests entirely upon the Organization. There is no proof in the record that the Assistant Trainmaster did anything more than supervise.

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 19th day of February 1986.