

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard System Railroad Company violated the terms of the controlling agreement when Foreman E. E. McLeod used the boom on the over-the-road truck to pick up wheels and truck sides and also push wheels on track.

2. That accordingly, the Seaboard System Railroad Company be ordered to compensate Carman R. E. Hewitt for four hours 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 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 Claimant is employed by the Seaboard System Railroad at Florence, South Carolina. On July 7, 1980, Carman C. E. Hyman was attempting to pick up a car truck using the boom of the over-the-road truck, but derailed the truck.

Foreman McLeod took over the boom controls to help rerail the truck. The Organization then filed a Claim on the Claimant's behalf, charging that the Foreman improperly performed Carmen's work; the Claim seeks compensation for the Claimant in the amount of four hours' pay at the pro rata rate.

The Organization contends that the Carrier violated Rules 99, 100, 101, and 26 of the Controlling Agreement. These Rules provide, in part:

"Rule 99 - Carman Special Rules

Qualifications: Any man who has served an apprenticeship or who has had four (4) years' practical experience at carmen's work, who with the aid of tools, with or without drawings, can lay out, build or perform the work of his craft or occupation in a mechanical manner shall constitute a carman.

Rule 100 - Classification of Work

(a) Carmen's work shall consist of building, maintaining, dismantling . . . , painting, upholstering and inspecting all passenger and freight cars, both wood and steel, . . . and all other work generally recognized as carmen's work.

Rule 101 - Carmen Apprentices

Includes regular and helper apprentices in connection with the work as defined in Rule 100.

Rule 26 - Assignment of Work

(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed.

(b) This rule does not prohibit foremen in the exercise of their duties to perform work."

The Organization points out that the Carrier admitted that its Foreman operated the boom, helped to rerail the truck, then found a second Carman to assist in the work on the truck. The Organization argues that because mechanics were employed at Florence, South Carolina on July 7, 1980, it was a violation of Rule 26(a) for the Foreman to operate the boom.

The Organization additionally contends that the job underlying this dispute was a two-man job from the outset; a second Carman, the Claimant, should have been assigned to assist in the work at the start. The Claimant was available and willing to accept a call to work at the time that this incident took place. Carman Hyman's inability to rerail the car truck, before the Foreman stepped in, was due to the fact that he did not have the necessary assistance of a second Carman. The Organization contends that the Master Mechanic was aware of this when he initially agreed to pay this Claim. The Organization finally contends that the Claim should be sustained.

The Carrier contends that there has been no violation of the Agreement. The Carrier asserts that Foreman McLeod properly instructed Carman Hyman in the correct use of the boom to rerail the car truck. The Carrier asserts that when Carman Hyman was unable to perform his duties satisfactorily, his Foreman properly instructed and assisted him in the work. The Carrier argues that Rule 26(b) specifically states that Foremen are not prohibited from performing any work in the exercise of their duties.

The Carrier points out that the Claimant was observing his rest day on the date in question; the Claimant was not readily available, suffered no monetary loss, and had no right to perform the disputed work. The Organization wants the Carrier to delay work so that an attempt may be made to locate the off-duty Claimant and then pay him at the overtime rate to perform

such work. The Carrier contends that such a method, rather than using an on-duty Carman receiving necessary hands-on instructions from his Foreman, would penalize the Carrier.

Finally, the Carrier contends that the Claim is excessive because on-duty employees were available to perform the work at the pro rata rate. The Carrier therefore contends that the Claim should be denied in its entirety.

This Board has reviewed the evidence in this case, and it finds that the Foreman only proceeded to the scene of the derailment after observing the Carman's inability to rerail the car truck with the boom of the over-the-road truck. We find that the Foreman took charge of the boom controls for approximately five or ten minutes in order to instruct the Carman to rerail the car truck in the proper manner. That is appropriate instruction that the Foreman has a right to perform.

Consequently, this Board finds that there has been no violation of the Agreement, and the Claim must be denied. Although we are aware that there are legitimate restrictions on Foremen performing work belonging to members of the Organization, hands-on instructions by Supervisors is permitted under the Agreement. As we stated in Award 8072:

"Supervisors, as part of their supervisory responsibility, have a right to counsel, instruct, or advise an employee by "on-hands" performance, as well as by verbal instruction."

The Foreman in this case performed minimal hands-on instruction in order to assist the Carman in the performance of his duty. There was no requirement for the Foreman to secure another Carman for this purpose.

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 28th day of May 1986.