

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

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

Dispute: Claim of Employees:

1. That under the current agreement, the Soo Line Railroad Company violated Rules 10, 27, 28, 94, and 98 of the shops Craft Agreement when, on June 6, 1983, the Soo Line Railroad Company ordered and allowed a Section Foreman and two (2) Sectionmen to perform Carmen's work of rerailing freight car DOWX 2121, which was derailed at Appleton, WI.
2. That, accordingly, the Soo Line Railroad Company be ordered to pay Carmen E. Miller two (2) hours, D. W. Kielman 3 1/2 hours and R. E. Wischow 3 1/2 hours penalty time at time and one-half carmen's rate of pay on June 6, 1983, for Soo Line violation of Rules 10, 27, 28, 94, and 98 when Soo Line Railroad Company allowed the Section Foreman and two Sectionmen to perform the carmen's work of rerailing and failed to call and allow the carmen who have their names on the emergency road service block at N. Fond du Lac Shops, WI, to perform the carmen's work of rerailing cars.

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 Claimants are assigned to the Carrier's wrecking crew of Fond du Lac, Wisconsin. On June 6, 1983, Carman E. Miller was dispatched to Appleton to repair an air line on DOWX 2121. After he departed, additional information was received indicating DOWX 2121 had derailed and a pair of wheels were off

the track on the main line within the Appleton yard limits. A Foreman and two Sectionmen unsuccessfully attempted to rerailed the car using frogs taken from the locomotive. Thereafter, Claimant Miller rerailed the car with the help of the two Sectionmen.

The Organization claims there is no provision in the Controlling Agreement which permits the use of Sectionmen to perform Carrier's work. According to the Organization, rerailed of cars is specifically spelled out in Rule 98. Only two exceptions are assertedly provided for and, otherwise, the Organization contends Carmen have the exclusive rights to perform all service requirements at wrecks or derailments.

- "1. Wrecking crew will be composed of Carmen, including Engineer, will be assigned by bulletin, and will be paid under Rule 10.
2. When a wreck occurs outside yard limits, equipment designated by the Carrier will be used, and a sufficient number of the regularly assigned crew will be called to accompany such equipment.
3. In case of emergency, should the Carrier use the equipment of a contractor (with or without operators) a sufficient number of qualified Carmen will be used as follows:
 - (a) If a regularly assigned wrecking crew is located at a point nearest to the scene of the wreck, a sufficient number of the regularly assigned wrecking crew will be called to work with the contractor as groundmen. If, after the Carrier has assigned all its regularly assigned wrecking crew members and additional groundmen are needed, additional Carmen from any location determined by the Carrier, will be called and used as additional groundmen.
 - (b) If at the point nearest the scene of the wreck, the Carrier does not have a regularly assigned wrecking crew, but has Carmen employed, the Carrier may dispatch a sufficient number of qualified Carmen from that point in lieu of calling a wrecking crew. If a sufficient number of Carmen cannot be obtained from groundmen, consistent with service requirements, Carmen from other points will be used.
4. For wrecks or derailments within yard limits, a sufficient number of Carmen will be called to perform this work.
5. When the Carrier elects to call a contractor for any wreck, it is understood that the necessary wrecking crews and/or Carmen, as nearly as possible, will be called so as to arrive at the wreck at about the same time as the contractor's crews.

6. This rule shall not be construed to prevent train or engine crews from rerailling cars and/or locomotives with frogs and/or blocking which is immediately available to the train or engine crew."

The Carrier points to longstanding and mutually accepted past practice on the property that employes other than Carmen have rerailed cars and locomotives with frogs, jacks, and blocking when the wrecking outfit or equipment is not called. Nothing in the language of Revised Rule 98 nor in Rule 94, according to the Carrier, exclusively grants rerailling to the Carmen. Prior to the revision of Rule 98, that Rule stated:

"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, sufficient Carmen will be called to perform the work."

When this language is contrasted with the amended Rule 98, supra, it is evident the old language is almost identically picked up in Paragraphs 2 and 4. Paragraph 1 simply states the wrecking crew will be composed of Carmen. Paragraph 3 deals entirely with emergencies. Paragraph 5 is devoted to circumstances under which a Contractor is called. Paragraphs 7 and 8 are not relevant. Thus, we come to Paragraph 6 which the Organization contends that since only train and engine crews are specifically permitted to engage in rerailling work, it follows all other crafts are excluded.

Second Division Award 10665 relies upon this language and states in part:

"The argument is made that this is not an agreement that gives the right to reraillment work to the carmen craft. While there is no language that specifically states the work is so reserved, the inclusion of Section 6 leads to no other conclusion."

The Award goes on to characterize Paragraph 6 as an exclusionary Section which limited the Scope of Rule 98. We now conclude that dicta to have been in error. Rule 98 is not the Scope Rule for the Carmen. Furthermore, as acknowledged in Award 10665, Rule 98 contains no language that specifically states that all rerailling work is exclusively reserved to the Carmen. Rule 98 pertains singularly to wrecks. The use of the word derailment is first used in Paragraph 4. As already noted, this language is almost identical to the last sentence of old Rule 98. As stated in Award 10111:

"The jurisdictional dispute over Carmen claims to the exclusive right to reraillment work has had a long history on this property. Paragraph 4 of Rule 98 is similar to the old rule. In denying claims of this kind under the old rule the Carrier stated in 1962 that:

...I would like to point out that the Second Division has many times held that the rerailing of cars is not exclusively reserved to carmen and others may assist in the rerailing of cars whether on the road or in a yard when it can be done without the aid of wrecking service. See Awards 425, 1322, 1482, 1757, 2049, 2208, 2343, 3257, and 3265.'

From the above, it is clear that the use of the word derailment in Paragraph 4 effected no change in the practices of rerailment work. Finally, we have the second and last use of the word rerailing in Paragraph 6. Award 10111 indicated that a long series of Claims resulted in inserting Paragraph 6. With no other language source reserving rerailment work exclusively to Carmen, any attempt to reason to such exclusivity through Paragraph 6 is improper. Paragraph 6, on its face, is, at best, ambiguous. Award 10111 held its application was limited to those employees under those narrowly defined conditions. We cannot overlook Rule 94 which is the Carmen's "Classification of Work." Rule 94 (n) reads:

"It is the intent of this Agreement to identify and preserve work performed by the carmen and will not expand or extend jurisdiction where the work is performed by employees of another craft as of the effective date of this Agreement."

Rule 94 (n) specifically extends the intent beyond the Rule and to the entire Controlling Agreement by using the word Agreement as opposed to Rule. Clearly, any Claim that Rule 98 was intended to extend the Carmen's jurisdiction over rerailment work as it existed before 1980 is totally rebutted by the existence and construction of Rule 94 (n).

As succinctly stated in Award 10111 and which this Board now reiterates:

"There are no precedents or practices giving Carmen exclusive jurisdiction over the rerailing work in routine situations as here involved where the car was rerailed by the simple use of blocks. Derailments are common within the shop and yard areas and have been the subject of many Board Awards. Action on such claims is well summarized in Second Division Award No. 5860 as follows:

'With respect to the question of exclusivity of work, the awards of the Division have held almost uniformly that unless a wrecking crew was called for wrecks or derailments, such work does not belong exclusively to Carmen. See Awards 3257, 3265, 3859, 4337, 4362, and 4901.'

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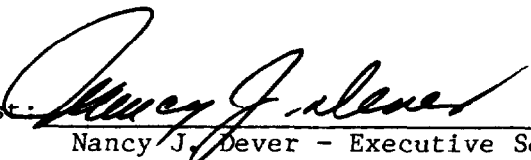
Award Number 10963
Docket Number 10805-T
2-SOO-CM-'86

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 27th day of August 1986.

