

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(Brotherhood 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 15, 27, 28 and 94 of the Shop Crafts agreement. That Carmen William G. Fish and Derwood R. Granville, Wrecker Engineers, were denied compensation of pay, when on September 30 and October 1 and 2, 1981, the Soo Line Railroad Company secured the services of an outside contractor's equipment of Loran Weiser Co. which included one front end loader, three caterpillars, two cranes and contractor's operators to perform Carmen's work to assist the assigned Shoreham's wrecking crew groundmen, in cleaning up derailment site of five hopper cars after the main line was cleared and open for traffic, as a result of a derailment that occurred on September 28, 1981 at Weyerhauser, Wisconsin.

2. That accordingly, the Soo Line Railroad Company be ordered to pay Carmen William G. Fish and Derwood R. Granville, 8 hours at straight time and 8 1/2 hours at time and one-half Carmen's rates of pay for each date on 9-30-81 and 10-1-81 and 2 hours at time and one-half on 10-2-81, for loss of compensation when denied their right to perform Carmen's work, which they were entitled to, due to their bulletin positions as Wrecker Engineers to operate the Soo Line Wrecker at derailments.

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.

At approximately 6:30 A.M. on September 28, 1981, Carrier's work extra train derailed seven (7) ballast hopper cars at a point west of M.P. 113 near Weyerhauser, Wisconsin. Two (2) of the cars blocked and damaged the roadbed while the remaining five (5) cars tumbled into a ditch and were leaning. The main line was cleared by the next day and the five (5) cars in the ditch were rerailed on September 30, October 1 and 2. Said rerailing work was performed by an outside contractor, Loran Weiser Construction Company in conjunction with Carrier's own ground crew, the Shoreham wrecking crew, Minneapolis, Minnesota. Carrier's own equipment, however, was not called.

Claimants hold regular bulletined assignments as wrecking engineers/operators on the Shoreham wrecking crew. According to the record, Claimants were called twice to perform as Groundsmen on the subject derailment, but they refused to go.

Organization contends that Carrier's actions herein violated Rules 15 (Bulletining Positions), Rule 27 (Seniority), Rule 28 (Assignment of Work) and Rule 94 (Classification of Work) of the 1954 Shop Craft Agreement, as well as Rule 98 (Wrecking) of the November 1, 1980 Agreement between Carrier and Organization.

Carrier summarily denies any contractual violation in that Claimants have no specific or exclusive right to perform or participate in wrecking service work on wrecks or derailments which occur out of yard limits. Moreover, Carrier additionally argues that the instant Claim is procedurally defective because Claimants refused to work as Groundsmen on the subject derailment when twice called by Carrier to perform such service.

Before this Board can determine the merits of this Claim, we must first address the threshold issue: whether Claimants waived their right to grieve by refusing Carrier's calls to work on the derailment outside of classification as Groundsmen.

Organization argues that Claimants had no choice but to refuse the calls because, if Claimants would have worked outside of their classification, they would have deprived other Carmen of their respective contractual rights to work as Groundsmen.

Carrier counters Organization's procedural contentions by arguing that it is an established tenet of Labor arbitration that Claimants should have first accepted the call to work and then later grieved Carrier's alleged impropriety. As support for its position, Carrier points to Second Division Award 8395 involving these same parties as well as one of the Claimants in the instant case, in which it was concluded:

"Mr. Fish was called twice to work, but refused, saying that it was not his normal work. His proper response should have been to accept the call, and if he felt he had been improperly placed, grieved after the fact."

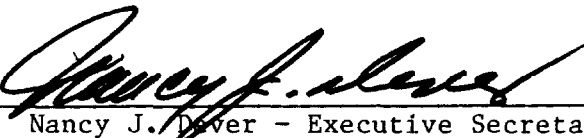
In the instant case, this Board sees no good or compelling reason to depart from the proper logic contained in Second Division Award 8395 cited hereinabove. Claimants in the instant case should have accepted the assignment in order to preserve their Claim. They chose to refuse their respective assignments and thereby waived their right to grieve this dispute. The Board has no choice but to deny this Claim in its entirety.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 10th day of September 1986.