

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

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

Dispute: Claim of Employees:

1. That under the current agreement, the Soo Line Railroad Company violated Rules 7, 27, 28, 94 and 98 of Shops Crafts Agreement as amended, when the Soo Line Railroad Company ordered three (3) Section crew members, to perform carmens work of rerailing Soo Line Car 60559, which was derailed at the West end of rip track at Dresser, Wi., on July 12, 1983.

2. That accordingly, the Soo Line Railroad Company be ordered to pay Shoreham Shops wrecker crew members, Carmen G. Erickson, D. Parvey and J. Sjoberg 2-2/3 hours call time each, at time and one half carmens rate of pay, for loss of compensation of pay, on July 12, 1983, when not called to perform carmens work of rerailing Soo Line Car 60559 which was derailed at Dresser, Wi.

Instead the Soo Line Railroad Company ordered and allowed the Sectionmen, other than carmen, to perform carmens work when attempting to rerail the freight car.

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.

In this dispute, the Brotherhood of Maintenance of Way Employes, a possible Third Party in interest, was notified but declined to intervene.

Claimants are assigned to the Carrier's Shoreham Shops Wrecker Crew at Minneapolis, Minnesota. On July 12, 1983, the Carrier assigned three Section Crewmen who attempted, without success through use of frogs and blocking to reraill a derailed freight car from 2:00 P.M. to 3:00 P.M. on the West end of the rip track at Dresser, Wisconsin. On July 13, 1983, Wrecker Crewmen from Shoreham Shops were called and successfully rerailed the car. Claimants seek 2-2/3 hours call time for not being called on July 12, 1983 for the claimed Carmen's work that was performed by the Section Crewmen on that date.

The Organization argues that under the claimed rules, Carmen are to be called for wrecks or derailments and that the exceptions provided for in the rules (emergencies or where train or engine crews could reraill with frogs or blocking which is immediately available) do not apply in this situation.

The Carrier first maintains that there is no language within Rule 98 that would require calling a Wrecking Crew to reraill a car with frogs, jacks, or blocking, as one pair of wheels on the ground does not constitute wrecking work within the meaning of that Rule. Second, the Carrier asserts that the past handling of Claims for rerailling prior to the 1980 revision of Rules 94 and 98 indicates it has been an accepted practice for other than Carmen to handle frogs in the rerailling of cars. Third, the Carrier asserts that under similar rules to Rule 98, the Board has consistently held that where a wrecking outfit is not called, rerailling is not the exclusive work of Carmen. Finally, according to the Carrier, since Carmen rerailed the derailed car and were compensated for that work, they were not deprived of the work.

We find that Second Division Award No. 10665, involving the same parties, controls this case and is not palpably erroneous. In that Award, an automobile struck a Carrier train outside of a yard. After the automobile had been cleared, it was discovered that one pair of car wheels was off the track. Sectionmen and a Roadmaster placed rerailling equipment and the Train Crew pulled the car back onto the track. The Carmen then filed Claims under Rules 98 and 28. The Board sustained the Carmen's Claims and rejected previous Awards cited by the Carrier that rerailling work was not exclusive to the Carmen since those Awards predated the 1980 Agreement. The Board further distinguished Second Division Award No. 10111 since that Award was limited to rerailling cars within the roundhouse area and therefore was not considered to be on point. Carrier arguments concerning the nature of the accident not being "wrecking work" within the meaning of Rule 98, and lack of exclusivity of reraillment work to the Carmen craft were similarly rejected in light of Rule 98's clear language. The same holds true in this case.

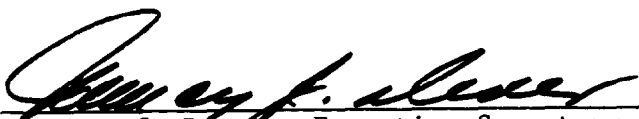
Any claimed past practice prior to the 1980 Agreement does not change the result in light of the clear language of the Rules 94 and 98 and the precedent cited. Even assuming that Carmen eventually performed the rerailling, as the Carrier argued here, does not, under the circumstances of this case, defeat the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 8th day of October 1986.