

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Burlington Northern Railroad

Dispute: Claim of Employees:

1. That the Burlington Northern Railroad Company knowingly and willfully violated the provisions of the current controlling Agreement when they did not call carmen to assist an outside contractor to reload, adjust and secure a load.

2. That Carmen W. Summers, J. Cain and J. Colombo be compensated at the carman's straight time rate of pay for August 13, 1984, from 6:00 a.m. to 7:00 p.m. and August 14, 1984, from 6:00 a.m. to 7:00 p.m.; Carman B. Knight be compensated at the carman's time and one-half rate (according to Rule No. 22 and 23, Furloughed Carmen) for August 14, 1984, from 6:00 a.m. to 7:00 p.m.; Carman L. Cook be compensated at the carman's straight time rate for August 13, 1984, from 6:00 a.m. to 7:00 p.m.

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.

As a result of a derailment at the Carrier's Lindenwood Yards in St. Louis, Missouri, lumber was spilled onto the ground. On August 13 and 14, 1984, employes of an outside firm loaded the lumber onto two railroad cars. The Organization thereafter filed the instant Claim, contending that the named Claimants should have been called to perform the work. In support of its position, the Organization relied on Rules 83(h) and 86(b) and (c), which read as follows:

"Rule 83

(h) Carmen's work of A.A.R. write-up men, Federal inspectors and car inspectors; including the adjusting and securing of shifted loads in shops and yards where carmen are employed."

"Rule 86. WRECKING CREWS

(b) When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will either accompany the outfit or will be transported by other means to and from the location of the wreck or derailment. For wrecks or derailments within the yard limits, sufficient carmen will be called to perform the work.

(c) In the event other than company-owned equipment is used for wrecks or derailments outside yard limits, sufficient carmen from the nearest location will be called to perform ground service (not operating) with the other than company-owned equipment. The number of carmen called will be sufficient when it equals or exceeds the number of groundmen used by the outside firm."

To the Organization, the foregoing Rules clearly established that the work performed by the outside contractor is work recognized by the Carrier as Carmen's work. The Organization maintains that the work of reloading lumber that was dropped from the two cars because of a derailment is fully covered by the cited Rule provisions.

Carrier declined the Claim, noting that there was no wrecking service performed but that the service provided by the outside contractor was loading lumber, which had been performed historically by outside contractors in the Lindenwood Yard. Carrier further asserted that, even assuming arguendo that this was Carmen's work, the Claimants did not have the exclusive right to load lumber onto the cars. Therefore, Carrier requested that the Claim be denied in its entirety.

After careful review of the record in its entirety, the Board notes at the outset that, as a fundamental matter, the Organization has the burden of proving all the elements of its case. In the instant case, the Organization has not demonstrated that the work at issue was Carmen's work. Several factors compel that conclusion. First, Rule 86(b) and (c) relied upon by the Organization is restricted to "... derailments outside of yard limits" The disputed matter in this case occurred within the Lindenwood Yard. In addition, the Organization did not provide evidence of any kind to show that

reloading lumber which was on the ground onto a railroad car is wrecking service within the meaning of Rules 86(b) and (c). The Board has previously passed on the issue of what constitutes wrecking service on this property, and has held that the loading of scrap and debris following a wreck is not wrecking service. See Second Division Awards 7125, 7084.

Applying those principles herein, it must be concluded that the loading of lumber onto a car following a wreck is not wrecking service and therefore Rule 86 is inapplicable.

Second, the Organization failed to show that Rule 83(h) was violated. Rule 83(h) on its face does not cover shifting loads or loading lumber onto cars. Moreover, it appears from the record that although Carmen perform work at Lindenwood from time to time and are available to go to that site, there are no Carmen employed at the Lindenwood Yard. Since Rule 83(h) refers to "... yard where carmen are employed," (emphasis added) we must find that this Rule provision, too, is inapposite.

Finally, we note that while the Organization maintained during the handling of this dispute on the property that Carmen generally reload and adjust lumber at a wreck site, it does not necessarily follow that they have an exclusive right to perform the work. In Second Division Award 10514, the Board stated:

"It is well settled that unless there is a rule between the parties which states that a particular Organization has the exclusive right to perform certain work, the Organization has the burden of proving, by past practice, that the work traditionally and exclusively belongs to members of that Organization on a system-wide basis"

Here, loading lumber is not listed as Carmen's work in Rule 83(h), and the Organization has not shown, or even alleged, that this work belongs to Carmen on a system-wide basis. For all these reasons, this Claim must fail.

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 30th day of September 1987.