

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, AFL-CIO
Parties to Dispute: (
(Seaboard System Railroad Company

Dispute: Claim of Dispute:

1. That the Seaboard System Railroad Company violated the controlling Agreement, in particular Rules 8, 15, 26, 99, 100 and 103, on January 31 and February 1, 1984 when Maintenance of Way men from Florence, South Carolina went to Martinez, Georgia and picked up wheels, trucks and other parts of the cars with a crane and loaded them into gondolas for shipment to Louisville, Kentucky.

2. That accordingly, the Seaboard System Railroad Company be ordered to compensate Carman Derrick Operator T. C. Bailey, Carman Groundmen D. L. Baker, C. I. Cutter, W. R. Faile and R. E. Hewitt for eight (8) hours overtime rate of pay for each one of these men on the dates of January 31 and February 1, 1984 totaling sixteen (16) hours for each man.

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.

As third party in interest, the Brotherhood of Maintenance of Way Employees was advised of the pendency of this case, but chose not to file a Submission with the Division.

Claimants are employed as Carmen at Florence, South Carolina.

On November 14, 1983, a derailment occurred at Martinez, Georgia, and the mainline was cleared by using the Florence and Savannah wreckers with their crews consisting of Carmen. The destroyed car bodies were left at the scene and were removed by outside contractors.

The remaining truck parts, consisting of wheels, axles, and other component parts of cars, as well as miscellaneous scrap were cluttering the right of way and surrounding private property. Four employees of the Maintenance of Way Department were sent on January 31 and February 1 to remove the material. It was subsequently forwarded to the former L & N Railroad's South Louisville Shops, as that company owned the destroyed cars.

The Organization submits that the Carrier violated various provisions of the controlling agreement, including but not limited to Rules 8, 15, 25, 99, 100, and 103, when it assigned Maintenance of Way employees to perform the disputed work on January 31 and February 1, 1984. It is the Organization's position, that, since the regularly assigned wrecker crew was called to go to the wreck on November 14, 1983, it should have returned to the area on January 31 and February 1 to complete the wrecker work. The Organization rejects the Carrier's contention that it properly assigned Maintenance of Way employees because the work consisted merely of picking up scrap. In this case, wheels, axles and other component parts were removed, indicating to the Organization that something more was involved than picking up scrap and debris in the maintenance of the right-of-way following the wreck.

Carrier contends that Carmen do not have the right under any Agreement Rule or practice to clean the right-of-way of scrap and debris. In this case, Carrier argues, the material cleared from the right-of-way was not inspected or classified as scrap or useable salvageable material, but was merely loaded for shipment to the owner, the former L & N Railroad.

Moreover, Carrier maintains that even if the work at issue belonged to Carmen, Claimants would not have been utilized, since they do not have the exclusive right to perform work at the point of derailment nor do they have a superior right to work at that point over members of the Savannah wrecker crew who were also used in cleaning the derailment.

We have carefully reviewed the numerous precedent awards, cited by the parties in support of their respective positions, and find that Second Division Award No. 4571 is precisely on point. In that case, a wrecker and crew had been dispatched to the scene of a derailment where some cars were rerailed, and other cars, badly burned, were dragged away from the site so as to clear the right-of-way. The wrecker and crew returned to their home station after three days. Approximately two weeks later, Carrier dispatched three Carmen to clean up the wreckage and handle the salvageable parts. As in the instant dispute, Carrier there maintained that the wrecking crew had performed all the wrecking service to which they were entitled when they were initially dispatched to the scene, and further, that picking up scrap and salvage was not wrecking service within the meaning of the Rule contended for by the Claimants.

The Board disagreed, however, and sustained the Claim, stating:

"....the mere fact that the disputed work was performed some two weeks after the initial wrecking service does

but of itself take it out of the classification of the wrecking service. If it was the work of picking up scrap and debris in the maintenance of the right of way following the wreck, then we would deny the claim.

But something more was involved here. The work performed on December 20 involved a judgment concerning parts which might or might not be salvageable and the handling of those parts in accordance with that judgment by mechanics skilled in the carmen's craft ... The wrecking crew was entitled to be called back to complete the wrecking service, and in calling other men and equipment to perform the work here involved, the carrier violated the controlling agreement."


In the instant case, the Organization submitted copies of weigh bills of the cars loaded by the Maintenance of Way employees which demonstrate that wheels, axles and other car components were handled on the dates in question. It was violative of the Agreement for the Carrier to utilize Maintenance of Way employees to handle these salvageable materials. Claimants were entitled to be called back to perform the work here involved, and as we have nothing of record to show that other Carmen had rights superior to that of the Claimants, we will rule to sustain the Claim in its entirety.

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 25th day of November 1987.