

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU  
(The Baltimore and Ohio Chicago Terminal Railroad Company

STATEMENT OF CLAIM:

1. That the Baltimore and Ohio Chicago Terminal Railroad Company (CSX Transportation) violated the terms and conditions of the current working Agreement, specifically Rule 22, when General Car Foreman C. E. Mewshaw ordered the Barr Yard Wreck Truck and three (3) Carmen to Forest Hill to perform a rerailling operation on Car RTTX 252441 on April 25, 1987.

2. That the Baltimore and Ohio Chicago Terminal Railroad Company be ordered to compensate Carmen A. Ruscetti, M. Giera and I. Gamboa eight (8) hours' pay each at the time and one-half rate of pay account of this Rule 22 violation.

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.

Carmen working South of 95th Street are in the Calumet Seniority District. Carmen assigned North of 95th Street are in the Chicago District. Forest Hill is located in the Calumet District. Barr Yard is located in the Chicago District. Both locations have wrecking crews. The wreck truck assigned to the crew at Barr Yard, though, carries a Hoesch hydraulic jack. Similar equipment is not assigned to the Forest Hill crew.

On April 25, 1987, a flat car loaded with two trailers derailed at the Forest Hill Yard. Both ends were on the ground and the car was leaning at a twenty degree angle. The Foreman on duty at Forest Hill believed that the car could not be rerailed with the retracker equipment available at that location. He phoned Carrier's Mechanical Superintendent and described the problem to him. The Superintendent dispatched the crew from Barr Yard to the scene and the car was rerailed with the Hoesch hydraulic jack.

The Organization filed a Claim on behalf of Forest Hill Carmen contending that Carrier violated its Agreement when Barr Yard Carmen were used in this rerailing operation. The Organization argues that Forest Hill Carmen could have been able to rerail the car with the tools at hand. It contends that derailed cars in worse condition have been rerailed without problems. It also contends that the Supervisor who decided that special equipment was needed was not on the scene and did not personally assess the problem. Also, that the use of the Hoesch hydraulic jack, if anything, increased the amount of time necessary to do the work. It also disputes that any special understanding exists whereby Barr Yard wreck crews are allowed to work on derailments outside their seniority district.

The Carrier contends that a "local" understanding exists with the Organization, as well as a past practice, that the Barr Yard wrecking crew and equipment could be used on either seniority district when special equipment is required for a rerailing operation. It points out that in the past, when a wreck derrick was assigned on the B&OCT, it was stationed at Barr Yard and manned by a Barr Yard crew. This crew and derrick handled derailments at any point on the property, without objection from the Organization. When the Hoesch equipment replaced the derrick it, too, was stationed at Barr Yard and manned by the Barr Yard Wreck Crew.

With regard to the issue of whether the April 25, 1987 derailment required special equipment, or could have been rerailed by Forest Hill Carmen, Carrier contends that this is pure speculation and second guessing on the part of the Organization. The Supervisor who made the decision, it is argued, has considerable experience in such matters, was familiar with the location and after considering the Foreman's advice, position of the car, the weight involved, ground conditions, etc., exercised his experienced judgment that Hoesch hydraulic equipment would be necessary. It was his responsibility to make the final decision and it had ought not now be questioned on the basis that Forest Hill Carmen rerailed cars in "worse shape," including an overturned car, without special equipment. (Carrier expresses difficulty in comprehending how the Forest Hill Crew was able to reset an overturned car "without the aid of special equipment.")

From the evidence in the record it is our view that a well defined past practice exists that when special equipment was required for a rerailing operation, in either seniority district, the Barr Yard Crew, to which the equipment was assigned, was used. It is manifestly apparent that when a wreck derrick was assigned on the B&OCT it was assigned to Barr Yard and was used in both districts. There was only one wreck derrick and when it was replaced with the Hoesch hydraulic jack, special rerailing equipment continued to be assigned to Barr Yard. Thus, while the equipment was changed the function of the crew remained the same.

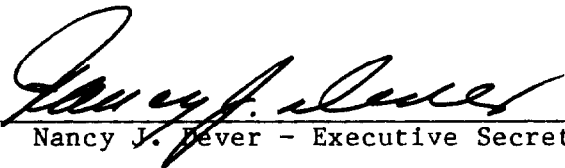
On the issue of whether the Hoesch equipment was not actually needed in this particular rerailling operation, the burden would be on the Organization to establish this point. It is clear that if the derailment were minor and special equipment was not needed, the work, by Carrier's own admission, would belong to Forest Hill Carmen. However, a decision was made that the derailment was not minor, and special equipment was required to safely place the car back on the track. The Organization must establish that this decision was improper and somehow resulted in an Agreement violation. This it has not done.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of March 1990.