

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
(
(Duluth, Missabe and Iron Range Railroad Company

STATEMENT OF CLAIM:

1. That the Duluth, Missabe and Iron Range Railroad Company violated the terms of our Current Agreement particularly Rule 65(b).

2. That accordingly, the Duluth, Missabe and Iron Range Railroad Company be ordered to compensate Carmen C. F. Kuzina and J. E. Friedman in the amount of four (4) hours each at the straight time rate for each day of January 14, 1988 and January 18, 1988 account of the Duluth, Missabe and Iron Range Railroad Company supervision assigning two (2) employees of the Firemen and Oilers craft to the work of wrecking service.

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.

There is no dispute that on January 14, and 18, 1988, two F&O employees along with one Carman rerailed a car at the Proctor Car Shop. Said cars were within yard limits and rerailed with the use of the 20 ton Grove Mobile Crane.

The Organization has pursued this Claim maintaining that Carmen have the exclusive right under Rule 65 in the rerailing of these cars. As Carmen were available and not called, the Organization argues that Carrier has violated the Agreement.

The Board's review of the Rules cited by the Organization finds no specific language granting exclusivity. In addition, the Carrier points out that the cars were being moved by F&O employees when they derailed. Carrier

asserts that the Carman was called to assist in the rerailling which is routinely done by other crafts, including train crews and Maintenance of Way employees. This is not refuted on the property.

The Firemen and Oilers entered a Third Party response which stated that "the actual work performed by the two laborers on both occasions was operating the crane and as the crane helper..., which is not Carman's work (emphasis in original)." They argue that the F&O Laborers were moving the cars when they derailed and operated or assisted in the operation of the crane which is not Carmen's work.

This Board finds that the Organization has failed to show Agreement language which grants exclusivity. Nor do we find a record of evidence that the work has historically been the exclusive right of Carmen rather than an extension of Fireman and Oilers' duties. There is no record established by the Organization to demonstrate that the Carrier was prohibited from its action or improperly assigned the work. Rule 65(b) requires that when there is a derailment within yard limits "sufficient carmen will be called to perform the work." The language has not been shown to require that only carmen can perform the work. A careful review of the Awards cited by the Organization show them to have been sustained either under totally different facts and circumstances or when other than Carmen were called to assist in rerailling.

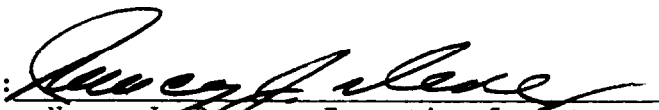
We find that Carmen and only Carmen were called to assist the F&O employees in rerailling their own car (Second Division Award 11661). Had the probative evidence supported the Organization's assertion that F&O employees were called to assist Carmen in rerailling, this would have constituted a different set of circumstances. In this case and under these instant facts, the Claim is denied (see Second Division Awards 10963, 8798, 7403, 5812, 3859, 2343, among others).

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 16th day of January 1991.

LABOR MEMBERS' DISSENT TO
AWARD NO. 11982 (Docket No.11788T)
Referee Marty E. Zusman

The Majority erred with the decision made in this Award, by not following the precedent set down by previous Awards of this Division that explicitly gives Carmen the exclusive right to reraill cars within yard limits. In Award No. 4674 of this Division wherein the Carrier assigned Maintenance of Way Employes to assist a train crew in rerailling two cars within yard limits held that:

"We do not believe that the second sentence gives the Carrier the choice of using or not using a sufficient number of carmen "For wrecks or derailments with-in yard limits." Accordingly, we believe the Carrier action violated the controlling labor Agreement."

This same opinion was echoed in many other Awards of this Division, such as; 4830, 6030, and 8090, all of which were made a part of the argument on the property and provided to this Arbitrator at the time the Division argued the Docket. Yet all were obviously ignored by this Arbitrator as they were not even mentioned in his Award.

The Majority erroneously relies on Award No. 11661 wherein it was found that the Rule in effect on that property, between that Carrier and the Organization specifically allowed the operating crew to reraill equipment that they, themselves may derail. Such allowance is not written into the language of the Agreement that is applicable in this Award.

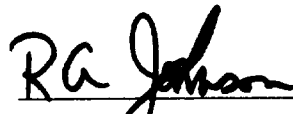
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Contrary to the Majority's erroneous opinion that:

"The Board's review of the Rules cited
by the Organization finds no specific
language granting exclusivity."

The Labor Members' believe that the opinions expressed
in the previously cited Awards clearly set a precedent
that does in fact support an argument for exclusivity
of Carmen being used "For wrecks or derailments within
yard limits."


For these reasons the Labor Members' Vigorously Dissent:



R. A. Johnson



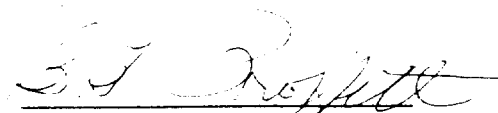
M. Filipovic



D. A. Hampton



R. E. Kowalski



B. T. Proffitt