Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12112
SECOND DIVISION Docket No. 11887
91-2-89-2-196

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The Chicago and North Western Transportation Company violated Rules 58 and 60 of the controlling agreement on October 11, 1988, when they failed to call Carmen R. J. Harrill and B. W. Lambrecht for a major derailment which occurred at Fremont, Nebraska on October 11, 1988, and instead utilizied two Mechanics-In-Charge stationed at Missouri Valley, Iowa, who are not regularly assigned members of the wrecking crew.

2. That the Chicago and North Western Transportation Company be ordered to compensate Carmen R. J. Harrill and B. W. Lambrecht in the amount of two (2) hours and forty (40) minutes at the overtime rate, and wrecking incentive pay of $.25, making a total of $57.02 to which they are entitled.

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.

The essental facts of this case are set forth as follows: On October 11, 1988, a derailment involving three freight cars occurred at Fremont, Nebraska. Berg Corporation was called to rerail these cars and arrived at the site at 11:00 A.M. It took approximately two hours to complete the rerailing of said cars and an additional one hour to load four bad order cars on flat-cars. As part of the rerailing work team effort, Carrier called two Mechanics-In-Charge who were employed at Missouri Valley, Iowa. This position is thirty six miles from Fremont. Claimants were employed as Carmen at Council Bluffs, Iowa some forty nine miles from the derailment site.

The Organization contends that Carrier's utilization of the two Mechanics-In-Charge violated Rules 58 and 60 of the Controlling Agreement and Item #2 of the February 18, 1976 C&NWT Supplemental Wrecking Agreement. This provision is referenced as follows:

> "In the past, some disagreement on what constituted Carmen's work in derailment. This new provision clearly spells out that wrecking is carmen's work on other than minor derailments. The second paragraph of Rule #127 was retained and reads as follows: 'This does not preclude using other employes to pick up or clear minor derailments when wrecking derrick is not used.' This is interpreted to mean the use of cranes or side booms in rerailing would be considered the same as derricks. Further, that employe such as Maintenance of Way and trainmen may set frogs or blocks and handle pulling cables in connection with frogging or blocking rerailing operation. Any derailment which could be handled with frogs or blocks would be considered minor."

More pointedly, it argues that since frogs or blocks were not used to rerail the three cars, the rerailing was not minor and this necessitated the use of Carmen. It also disputes Carrier's position that the June 1, 1939 Memorandum Agreement concerning Mechanics-In-Charge is relevant to those circumstances, arguing instead that the memorandum does not grant Carrier the authority to send a Mechanic-In-Charge away from his point of employment and allow him to perform wrecking work. It cites Second Division Award 9394 as controlling.

Carrier contends that Rule 60 permits the utilization of outside contractors to clear up wrecks or derailments, provided Carrier observes the correlative Carman manning requirements. It points out that under this Rule, when a contractor merely provides equipment and operators, it is only required to provide a minimum of two Carmen. If the contractor provides personnel other than equipment operators, the manning requirement increases. In the case at bar, Carrier notes that the Berg Corporation provides equipment and operators, but not groundmen. Consequently, since it was only required to furnish the groundmen at the Fremont situs and since it had the right under the interpretative authority of Second Division Award 9974 to use Mechanic-In-Charge in lieu of Carmen to work with the contractor, Carrier maintains that it fulfilled the requirements of Rule 60. This Award involving the same parties states in pertinent part:

> "There is no demonstrated process to show that wrecking service should as an exception, preclude the use of Mechanics-in-Charge to fulfull the required complement of Carmen."

See Second Division Awards 9976, 10494, 11847 and 11949 also involving the same parties. Furthermore, Carrier asserts that the distinction between minor and major derailments as contained in the February 18, 1976 Supplemental Wrecking Agreement is without standing, since there has been no showing that the Organization's interpretation was agreed to by the "appropriate interpreters" of the Agreement. It also maintains that under the authority of Second Division Award 9974, et al., Mechanics-In-Charge may be used to perform any Carmen's work.

In considering this dispute within the context of the cited rules, and awards, the Board concurs with Carrier's position. In Second Division Award 11847 involving the same parties and the same adjudicative issue, the Board held that it was not impermissible to use Mechanics-In-Charge who covered the same territory where the derailing occurred and who were closer to the wreck site. We noted in that award the precedent authority of Second Division Awards 9974, 9976, 10494, 11420 which upheld Carrier's right to use Mechanics-In-Charge under the conditions of Rule 60, (2)(b). Since the facts of the instant case fall clearly within the interpretative parameters of the aforesaid rulings, and since there are no distinquishing circumstances that would arguably warrant a variant Interpretation, the Board is constrained to deny the Claim.

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 14th day of August 1991.