

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12516
Docket No. 12235-T
93-2-91-2-21

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

PARTIES TO DISPUTE: (

(Brotherhood Railway Carmen/Division
(Transportation Communications
(International Union
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake and Ohio Railroad (sic) Company (CSX Transportation, Inc.), (hereinafter "carrier") violated the provisions of Rules 7 and 158 of the Shop Crafts Agreement between Transportation Communications International Union -- Carmen's Division and the Chesapeake and Ohio Railroad (sic) Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carmen A. Flocker and R. Cales (hereinafter "claimants") on November 1, 1988 when the carrier utilized Laborers C. Stephens and K. Ellerbrock to reraill car SCL/LN 24947.

2. That, accordingly, the claimants are entitled to be compensated for four (4) hours pay each at the applicable Carmen's rate for said 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 employe 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 International Brotherhood of Firemen and Oilers was advised of the pendency of this dispute, and filed a Submission with the Board.

The events giving rise to the instant claim are undisputed. On November 1, 1988, at 2:00 A.M., L&N 24947 derailed within the Carrier's Raceland Car Shop facility in Raceland, Kentucky. At 6:30 A.M. the Carrier assigned two Laborers to reraill the car. The rerailling was accomplished without the use of a wreck derrick or a crane.

The Organization claims that Carmen have exclusive rights to reraill cars under Rule 158 which provides as follows:

"When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

In support of its claim that the Carrier violated Rule 158, the Organization focuses on the second sentence of Rule 158 which states: "For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

The guiding principles in interpreting contractual language are all too familiar. The writing is to have a reasonable construction. Disproportionate emphasis on a single sentence does not serve the purpose of interpretation. Thus, the literal sense of the terms of the second sentence in Rule 158 may be qualified by the context. Moreover, the significance of part of the writing is determined by a consideration of all of its parts. In addition, the overall standard of interpretation is the meaning that would be attached to the integration by a reasonable intelligent person.

In light of these principles, this Board turns to an interpretation of Rule 158. Both Rule 158 and Rule 157 are found under the heading of "Wrecking Crews." Thus, these Rules specifically address wrecking work. Rather than severing the second sentence of Rule 158 from the text of Rule 158 and isolating it, this Board concludes that the terms of both sentences become operative when a wrecking crew is called for wrecks or derailments outside of or within yard limits.

The Board concludes that as with the first sentence of the Rule, the second sentence becomes operative "[W]hen wrecking crews are called for wrecks or derailments." However, unlike the first sentence which refers to wrecks or derailments outside of yard limits, the second sentence applies to wrecks or derailments within

yard limits. Outside of yard limits, the first sentence indicates that a sufficient number of the regularly assigned crew will accompany the outfit." By contrast, the second sentence provides that sufficient Carmen will be called to perform the work, as part of the wrecking crew.

Support for this interpretation is found in Second Division Award 6030 involving the parties in this dispute. In that case, the Carrier used a Maintenance of Way RC-18 crane and its operator and helper to assist the wrecking crew in clearing the track. The Organization contended that "The utilization of M. of W. equipment and employees to assist carmen in the re-railment of a train was a violation of the Agreement between the parties." The Board framed the issue to be resolved in Second Division Award 6030 as follows: "...whether, under the circumstances and under the interpretation of the second sentence of Rule 158, claimants (Carmen) had the exclusive right to perform the work in question."

The Board sustained the claim while citing various Awards which establish that Carmen do not have the exclusive right to work under Rule 158 except when the wrecking crew and wrecking equipment are called to perform the work. The Board stated:

"Initially, it must be noted that Carrier utilized regular members of the wreck crew in this derailment. Carrier submits, however, that 'it was under no obligation to use the employes assigned to the Russell wreck train since the use of any carmen would have met the requirements of Rule 158 as this derailment was within yard limits.'

The Board does not agree. It has been almost uniformly held that unless a wrecking crew was called for wrecks or derailments, inside or outside yard limits, there is no exclusive right to the work (Awards 3257, 3265, 3859, 4337, 4362, 4901 and 5812).

Where, however, a wrecking crew had been called and wrecking equipment had been used, that work belongs to the Carmen. Under such circumstances there is no distinction under Rule 158 between wrecks outside yard limits and wrecks inside yard limits. See Awards 4337 and 5860."

Furthermore, Second Division Award 4337 (involving a dispute between the Carmen and the Baltimore and Ohio Railroad Company) interpreted language identical to the language contained in Rule 158. The Board stated:

"From the face of Rule 142 it is apparent that the two sentences supplement one another. The first sentence relates to wrecks or derailments outside of yard limits. The entire Rule clearly deals with the composition of make-up wrecking crews and thus is applicable only when such wrecking crews are called.

In the instant case, no wrecking crew was called. Hence, the work performed in rerailing the car in question did not exclusively belong to carmen under Rule 142. In addition, no wrecking equipment was used, the operation of which would possibly have belonged to carmen under Rule 141 of the labor agreement.

In summary, we hold that the Carrier did not violate Rule 142 or any other Rule of the labor agreement when it assigned the rerailing of the car under consideration to employes other than carmen."

Rule 158 is not a Classification of Work Rule which gives Carmen exclusive jurisdiction to all rerailing work. It is a "when called" Rule, the application of which requires the Carrier to call and use the wrecking crew and wrecking equipment. In doing so, under Rule 158, the Carrier is required to augment the wrecking crew with "sufficient carmen" who are "called to perform the work."

In the instant case, Laborers, who were assigned to rerail the car did so without use of a wreck derrick or a crane. Accordingly, there is no support in Rule 158 to sustain the instant claim.

Moreover, the record establishes that the Carrier's practice has been to use Laborers and other crafts to rerail cars within the limits of its shops when wrecking equipment is not used.

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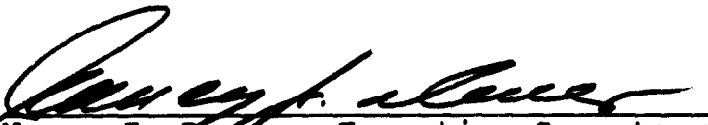
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March 1993.