Award No. 9002
Docket No. MW-8112

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when it refused to compensate Section Laborers W. F. Ellison, E. R. Gladson, L. G. Yantis, Ellis Jones, S. R. Stearns, E. W. Frost and Didney Hawthorne at the carman's rate of pay for the time they were engaged in rerailing cars on February 27, 28 and March 1, 1955;

(2) Each of the claimants named in part (1) of this claim be allowed the difference between what they received and what they should have been paid at the carman's rate of pay for services as rendered in performing the work referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On February 27, 28 and March 1, 1955 the Carrier assigned the claimant Section Laborers to perform work customarily recognized as Carmen's work in rerailing five derailed cars at Mile Post 263 near Rotan, Texas.

The work consisted of the operation of 50 ton jacks as well as the use of journal jacks in jacking up the car bodies to the desired height, securing with cribbing or blocking, the placing of the trucks thereunder, the removal of the blocking, then lowering the cars down to position on the trucks. For this service the claimants were compensated at their regular rates of pay.

The rate of pay paid section laborers is less than that paid Carmen.

Claim was submitted in behalf of the claimants requesting that each be allowed the difference between what they received and what they should have been paid at the Carman's rate of pay because of this work assignment.

The Carrier requests oral hearing and desires to be represented thereat.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends that on February 27, 28 and March 1, 1955 the claimants, Section Laborers, were required to perform work customarily recognized as Carmen's work in rerailing five derailed cars near Rotan, Texas. For this service the claimants contend that they were entitled to the Carmen's rate of pay which is higher than the rate received (Section Laborers), in line with Rule 1 of Article 15.

Claimants were called from Rotan, because of the derailment of six cars of plaster board on Sunday, February 27, 1955, and the question before us is whether or not claimants performed Carmen's work on the dates involved. Both the Carrier and the Organization agree "* * * the application of the rates of pay depends upon the correct and proper interpretation of the Carmen's and the Maintenance of Way Employes' Agreements in the light of the rules of those Agreements and the recognized and established application thereof on this property * * *".

Rule 1 of Article 15, Composite Service, of the Agreement reads as follows:

> "Rule 1. An employe working on more than one class of work on any day will be allowed the rate applicable to the character of work preponderating for the day, except that when temporarily assigned by the proper officer to lower rated positions, when such assignment is not brought about by a reduction of force or request or fault of such employe, the rate of pay shall not be reduced.
>
> "This rule not to permit using regularly assigned employes of a lower rate of pay for less than half of a work day period, to avoid payment of higher rates."

Section Laborer's work consists in the maintenance of the track and other facilities. Whether certain types of work belong to the Section Laborer or Carmen's Organization would depend upon the purpose sought to be accomplished by it.

This Carrier had a similar situation which was settled on the property by the Vice President and General Manager, Mr. E. Jones, by letter of November 25, 1942, wherein he states: the work required

> "using heavy jacks, jacking up and cribbing the car sufficiently to enable the car foreman to re-arrange the trucks' brake rigging and other equipment and to place the oil tank in a movable condition.
>
> "It is our position that the preponderance of this work was that of carmen's work and that the men assisting the car foreman should be paid carman's rate."

In outlining the work performed by the claimants in this case to the Carrier, the Organization Representative stated in his claim on April 21, 1955, and it was not denied, "* * * This work was performed by using large 50 ton jacks and journal jacks in jacking up the cars, cribbing the cars up and rejacking them to the extent that tracks could be built under each car in succession. * * *"

In reviewing the awards presented by both the Carrier and the Organization in this case it is very clear that the decisions of this Division are mixed, depending upon the circumstances in each case. In this case the record and evidence show that the Section Laborers did work other than the work regularly performed by them and although track laying was a part of this service it appears that the preponderance of the work performed was Carmen's work. We do not hold that Sectionmen may not under any circumstances render assistance in the rerailing of cars at their regular rate of pay, however, in this particular case the record and work required to be performed clearly show that the preponderance of the work was not in line with their normal duties.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claimants, W. F. Ellison, E. R. Gladson, L. G. Yantis, Ellis Jones, S. R. Stearns, E. W. Frost and Didney Hawthorne, did work that was Carmen's work in rerailing cars on February 27, 28 and March 1, 1955, and should be compensated for the difference between what they received and what they should have been paid at the Carmen's rate of pay.

AWARD

Claim allowed in line with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: F. P. Morse
Acting Secretary

Dated at Chicago, Illinois, this 1st day of October, 1959.

DISSENT TO AWARD NO. 9002, DOCKET NO. MW-8112

Award 9002 holds that the work of rerailing cars performed by Claimants in this case is carmen's work. This is in conflict with Second Division Award 2208 which denied claims of carmen on this same Carrier in a similar case when section forces were used to rerail cars. Therein, the Second Division held as follows:

> "With reference to that part of the claim that carmen only can rerail locomotives and cars outside of yard limits, we hold against the claimants. Where wrecking crews are called for wrecks or rerailments outside of yard limits, carmen regularly assigned to a wrecker crew are entitled to work under Rule 67 (c). But in the present case, the wrecker outfit was not called. In fact, claimants were not even assigned to the wrecker crew. **When a wrecker outfit is not called, the rerailing of locomotives and cars is not the exclu-**

sive work of carmen. Awards 2049, 1763, 1757, 1482, 1322. The claim for rerailing the cars is not valid." (Emphasis added.)

On the basis of Second Division Award 2208 and other existing authoritative precedents, the instant claim should have been denied because herein the derailment also occurred outside of yard limits and the wrecker was not called to rerail the cars. Prior to Award 2208 having been made by the Second Division and while the case was pending before that Division, Petitioner herein itself cited that case as allegedly supporting the instant claim, thus confirming the similarity of the two cases. No valid reason is shown by the majority in Award 9002 for not following Second Division Award 2208 which was based upon sound precedent.

While Award 9002 alleges Carrier had a similar situation which was settled by the Vice President and General Manager on the property in 1942, the Carrier showed that that case occurred within yard limits and so was distinguished from the instant case.

In addition, the record in the instant case shows that, in the past, various classes of employes have performed this work outside of yard limits at their regular rates of pay; that it has always been recognized as work which is not exclusive to any class, and that numerous Agreement changes have been negotiated between the parties hereto since 1919 without abrogating or changing this practice.

For the foregoing reasons, among others, Award 9002 is in error and we dissent.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ J. F. Mullen