Award No. 13093
Docket No. MW-12979

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it failed to compensate Section Foreman E. C. Cremer and Laborers C. W. Elder, D. R. Glines and R. J. Voght at the Carmen's time and one-half rate of pay for service performed on July 23, 1960.

(2) Section Foreman E. C. Cremer and Laborers C. W. Elder, D. R. Glines and R. J. Voght now be allowed the difference between what they should have received at the Carmen's time and one-half rate of pay and what they were paid for the service referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: At 9:15 P.M. on Friday, July 22, 1960 engine No. 301 and one (1) car were derailed on the siding at 8th Street Crossing, Fairfield, Iowa. The car was rerailed by another switch engine that same night, but the engine was left on the siding until the following morning when it could be rerailed during the daylight hours.

Section Foreman E. C. Cremer and Section Laborers C. W. Elder, D. R. Glines and R. J. Voght were called to participate in the work of rerailing engine 301.

The rerailing work commenced at 7:00 A.M. and was completed at 2:00 P.M. The claimants spent the balance of the day from 2:00 P.M. to 5:00 P.M. repairing the track damage caused by the derailment.

The work performed by the claimants consisted of carrying large jacks, blocks, etc. and actively participating in the work of jacking the engine up so it could be placed back on the rails. The claimants were compensated for such service at their respective track department rates of pay. Claim was then filed with Superintendent Zadnichek that each claimant should be compensated at the Carmen's time and one-half rate of pay for the entire day.

OPINION OF BOARD: On July 23, 1960, Claimants, a section foreman and 3 laborers, were used from 7:00 A.M. to 2:00 P.M. to rerail a switch engine. From 2:00 P.M. to 5:00 P.M. they were used to repair track damage. For such service they were compensated at their respective track department rates of pay. They contend that they should have been compensated at the Carmen's rate of pay, instead, and claim the difference.

Claimants cite Rule 45, which reads as follows:

"RULE 45. COMPOSITE SERVICE

An employe temporarily assigned by proper authority to a position paying a higher rate than the position to which he is regularly assigned for four (4) hours or more in one day will be allowed the higher rate for the entire day. Except in reduction of force, the rate of pay of an employe will not be reduced when temporarily assigned by proper authority to a lower rated position."

Claimants also cite Rule 79 (d) of the Carmen's Agreement, which reads as follows:

"(d) Nothing herein shall be construed to prevent train crews or other available employes from rerailing cars or locomotives when wrecker is not required at points where carmen are not immediately available."

Claimants take the position that the rerailing work which they performed for more than four (4) hours belonged exclusively to Carmen and that they are entitled to the higher Carmen's rate of pay for the full eight (8) hours under Rule 45, above quoted.

Carrier denies that the work performed by Claimants belongs exclusively to Carmen, where no wrecker is called, but that the work involved here can be performed by regular Maintenance of Way Employes as well. It then contends that the work, not being Carmen's work, need not be compensated at Carmen's rate of pay.

We are thus faced with a rather unique question. We are asked to decree that a type of work belongs exclusively to Carmen in a claim not progressed by Carmen, which is the more common situation, but by Maintenance of Way personnel.

Fortunately for this Board, the Second Division, which has the proper jurisdiction to interpret the Carmen's Agreement, has considered the question in cases arising on other properties. In Award 1482, the rerailing was done by section men. The Board held that it is only when a wrecker is required that all wrecking work is assigned to Carmen, and that where a wrecker is not called or needed, other employes than Carmen may properly rerail locomotives. Again in Award 2343, it was stated:

"It is clear that carmen do not have the exclusive right to rerail engines and cars except where specific rules so provide, . . .

* * * * *

This Board has held that the rerailing of engines and cars is not the exclusive work of carmen when a wrecker is not called out."

It is admitted that no wrecker was required in this case.

We are of the opinion that the Claimants were properly compensated for the work they performed and that their claim should be denied.

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 Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1964.