

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29556
Docket No. MS-29413
93-3-90-3-321

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Lake Terminal Railroad Company
(United Steelworkers of America

STATEMENT OF CLAIM:

"Claim Number CD-2-89; This grievance is being instituted by the Organization on behalf of the employees of the Car Repair Department. The grievance is that on the day of August 2, 1989 at approximately 12:50 P.M. Mr. L. Johnson, assistant supervisor of the Maintenance of Way department, and Mr. T. Alvarado, track foreman for the Maintenance of Way department, were both observed trying to reraill the USX narrow gage engine which had derailed near the north door of the Bloom Mill. They attempted to reraill the engine by placing wedges underneath the wheels so as to have the engine climb back under its own power. However, their attempt to reraill the engine was futile and the Car Repair department, which customarily handles derailments, was notified. However, instead of using the hourly employees of the Car Repair department to reraill the engine, only supervisors were used. Those supervisors who manually assisted in rerailling the engine were Car Repair Department supervisor Mr. Jack Justice, Maintenance of Way Department supervisor Mr. Robert Kepic, Maintenance of Way assistant supervisor Mr. Larry K. Johnson, Maintenance of Way track foreman Mr. Timothy Alvarado, and The Lake Terminal Railroad Company superintendent Mr. J. E. Streett. Their attempt to reraill the engine was successful. Unfortunately, in their successful to reraill the engine they violated Rule of Definitions; section 4. and Car Repair Department Rule 16; sections (b) and section (d).

For this violation of the Contract, the Organization is requesting that the Company pay as penalty eight (8) hours pay at their regular rate of pay to one (1) wreck crew. The penalty is to be paid according to Rule 16; section (s) 1. This penalty payment is in addition to all other earnings availability to perform the work to be considered."

FINDINGS:

The Third 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.

This claim was filed on behalf of employes in Carrier's Car Repair Department who seek eight hours of pay at their regular rate for Carrier's failure to call them as a wreck crew to rerail a USX narrow gage engine that had derailed near the Bloom Mill on August 2, 1989.

After the claim was advanced to this Board, the Carrier Member of the Third Division raised a question as to whether this Division had jurisdiction over the dispute. Under the Railway Labor Act, statutory jurisdictional matters may be addressed at any stage of the proceedings.

Rule 16(b) of the Car Department Special Rules specifies that:

Employees in the Car Department shall consist of carmen (inspectors and repairmen), other craftsmen, helpers and laborers, and only carmen shall do work generally recognized as carmen's work.

In Section 3 (h) of the Railway Labor Act, the jurisdiction of each of the four Divisions of the NRAB is defined. Jurisdiction of disputes involving Carmen falls to the Second Division. Included in the submissions of both parties are numerous Second Division decisions involving the same issue as addressed here.

Because of this Division's lack of jurisdiction, the claim must be dismissed.

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A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.