Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11660
SECOND DIVISION Docket No. 11513-T
89-2-87-2-160

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States and Canada
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

1. That the Indiana Harbor Belt Railroad Company violated the terms and conditions of the Agreement, specifically Rules 157 and 31, when they allowed Terminal Superintendent L. Cundary and two Maintenance of Way employes to perform wrecking work in rerailing car TTKX 908261 on October 10, 1986.

2. That the Indiana Harbor Belt Railroad Company be ordered to compensate Carmen D. Moll, T. Soria and T. King eight (8) hours' pay each at the time and one-half rate of pay for this violation of the Agreement.

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.

On October 10, 1986, TTKX 908261 was derailed on the No. 3 lead at the East end of Carrier's Blue Island, Illinois yard. Carrier's Terminal Superintendent, with the assistance of two Maintenance of Way employees rerailed the car using a rerailing frog. The Organization claimed that Carrier's use of other than Carmen in the rerailing operation violated Rule 157(a) of its Agreement, reading in part:

> "(a) Wrecking crews shall be composed of carmen and shall be used in all wrecking and rerailing work on entire carrier's property, adjoining properties and on other railroad property when requested and will be paid for such service under Rule 10. The terminology of 'all wrecking work' used in this Rule 157 is not applicable when trainmen and or/enginemen can rerail cars with their engine(s) and without additional assistance."

The rerailing operation took about ten minutes to complete and the Organization filed a claim for three Carmen seeking 8 hours pay at time and one-half rates for the violation. The claim was denied by Carrier's Manager Car Inspection and Repair. When the claim was appealed to Carrier's Superintendent, Equipment and Stores, the reparations sought were stated to be 8 hours pay, with no mention being made of time and one-half. Carrier's denial at this level was predicated, among other things, on the basis that the compensation sought was unreasonable.

Appeal was taken to Carrier's Manager Labor Relations and Personnel. The appeal asked for 8 hours pay at time and one-half. After conference, Carrier denied the Claim on the basis that:

> "... any intrusion into the work exclusivity was so insignificant to constitute at most a de minimis violation."

Carrier also took the position that the Claim was "invalid and barred" because the claim appealed to the Superintendent differed from the original claim that was filed with the Manager. In its Submission to this Board Carrier repeats its de minimis argument as well as its procedural argument that the claim was changed in the on-the-property handling.

Third Party notices were given to the Brotherhood of Maintenance of Way Employees and the United Transportation Union. Neither Organization filed a response.

It is our view that Carrier's procedural contention that the Claim was altered is frivolous. Forty years ago we ruled that insubstantial variances in reparations developing within the on-the-property claim handling procedures would not bar our consideration of a claim on its merits. In Third Division Award 3256 the Board held:

> "It is a fact established by the record that variances in the form of the claim occurred from time to time until the claim reached this Board. In this respect, it was not intended by the Railway Labor Act that its administration should become super-technical and that the disposition of claims should become involved in intricate procedures having the effect of delaying rather than expediting the settlement of disputes. The subject matter of the claim, - the claimed violation of the Agreement, - has been the same throughout its handling. The fact that the reparations asked for because of the alleged violation may have been amended from time to time, does not result in a change in the identity of the subject of the claim. The relief demanded is ordinarily treated as no part of the

> claim and consequently may be amended from time to time without bringing about a variance that would deprive this Board of authority to hear and determine it. No prejudice to the Carrier appears to have resulted in the presented case and the claim of variance is without merit." (Emphasis added.)

On the merits of the matter we note that any uncomplicated reading of Rule 157, which was renegotiated and placed into effect on January 1, 1984, indicates that all rerailing work occurring on Carrier's entire property belongs to Carmen wrecking crews unless the rerailing can be accomplished by trainmen and enginemen without additional assistance. It is manifestly apparent that the derailment incident under review here was not accomplished by trainmen and enginemen without additional assistance. Accordingly, we find that the Agreement was violated.

Carrier suggests that, at best, any violation was de minimis. We recognize that the rerailing function took only about ten minutes, but the work involved, nonetheless, was reserved to Carmen by the terms of their Agreement. If the parties, in 1984, when they rewrote the Rule, wanted to exclude rerailing activity that took but ten minutes it was within their power to do so. From experience they most surely were aware that on occasion rerailing would be completed in a matter of minutes. Nonetheless, they stated in their Agreement that all such work, except when done by the train and engine crew without assistance, would be done by wrecking crews composed of Carmen. Accordingly, we cannot impose an exception under a de minimis concept.

Carrier has argued that Claimants were fully employed on the day of the incident and therefore did not lose any time or compensation. When work reserved to a particular craft is improperly assigned to individuals outside the Agreement full employment of Claimants is not a bar to recovery of reparations. In Second Division Award 7504 we stated:

> "The fact that the Claimant was under pay and at work at another location at the time the Foreman performed the work on the heating and air conditioning controls is not sufficient to defeat a claim for pay.
>
> * * * To say that the claimant is not entitled to pay because, at a given moment, he was under pay elsewhere would obviously give the Carrier a latitude of work assignment not sanctioned by the rules."

Claimants are seeking 8 hours compensation for the violation. Rule 157, mentioned above, in addition to designating that Carmen will be assigned wrecking and rerailing work, also details circumstances and amounts of compensation required when employees are called to perform this service.

From study of the last 16 paragraphs of this Rule it is clear that if 2 hours and 40 minutes time or less is worked when an employee is called for wrecking service he is to be paid a minimum of 4 hours pay. Payment of 4 hours pay, at straight time rates, for each Claimant in this matter would appear to be in harmony with the concepts the parties negotiated into their Rule and would be appropriate in the circumstances of this case.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of March 1989.