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

(Brotherhood Railway Carmen of the United States and
( Canada

PARTIES TO DISPUTE:

(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 employees to perform wrecking work in relaying 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 employees 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 relaid the car using a relaying frog. The Organization claimed that Carrier's use of other than Carmen in the relaying 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 relaying 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/engineenmen can relaid 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 deter-
mine 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 be-
longs 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 re-
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 rerail-
ing 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 Agree-
ment 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 repara-
tions. 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 condi-
tioning 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.

AWARD

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Never - Executive Secretary

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