

PUBLIC LAW BOARD NO. 2678

Docket No. 43  
T-42514/504  
Case No. 35450  
Award No. 28

PARTIES TO THE DISPUTE:

United Transportation Union  
General Committee of Adjustment - C&T

vs.

The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM:

Claim of Conductor A. S. Vcelka, ID. 1039340, Flagman J. R. Starkey, ID. 1039372 and Brakeman C. L. Millhouse, ID. 1039406 for one day at Through Freight Rate of pay on January 4, 1979, account employees of private contractor switching cars and handling switches.

OPINION OF BOARD:

Two cars were derailed on the single line main track at Pine Grove, West Virginia, on the Monogah Division. The derailment site was approximately 100 feet west of the east end of the passing siding, adjacent to the main track. The cars were rerailed by a private contractor using a 100-ton off-rail mobile crane. The Trainmaster on the scene secured permission from the operator to foul the main track for this work. Once rerailed, each car in turn was moved by the crane 150 feet to the switching point and onto the siding for repair work. The contractor's forces handled switching necessary to accomplish those movements. Subsequently, the present claim was filed alleging that Carrier should have called Claimants to make the 150-foot straightaway move and handle the switching and shoving into the siding. In final denial on the property, Carrier answered the claim as follows:


"Based on the foregoing factual record, it is evident that the use of train and engine service employes in retracking the two derailed cars would have unnecessarily delayed the retracking operation as they would have had to move the crane off the railroad in order to get an engine against either of the retracked cars. The cars were moved only approximately 150 feet by the contractor and we do not feel that any work was improperly denied the claimant trainmen. It is our position that the claim is not supported by the Trainmen's Agreement and is declined accordingly."

A nearly identical claim between these same parties was resolved by PLB 1312 in Award 425 (A. VanWart, 1979). We find the rationale of that decision equally compelling in this case:

"Despite the eloquent arguments of the Employees they are found to be not persuasive enough because Article III of the June 25, 1964 UTU National Agreement became the governing rule on self-propelled machines and it limits its application to "on-rail self-propelled vehicles or machines." The Awards cited are not similar and ante-date the June 25, 1964 Agreement. In the circumstances, the claim shall be denied."

AWARD

Claim denied.

  
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 Carrier Member

  
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 Employe Member

  
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 Dana E. Eischen, Chairman  
 and Neutral Member

Date: 1-4-82