Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10867
SECOND DIVISION Docket No. 10204
2-BN-CM-'86

This Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Burlington Northern Railroad Company

Statement of Claim:

1. That the Burlington Northern Railroad Company violated the terms of the controlling Agreement, specifically Rules 27(a), 83 and 86, when they utilized an outside contractor to augment the Denver, Colorado wrecking crew, who were dispatched from the Denver Repair Track to tie down damaged freight cars that had derailed at Otis, Colorado on April 4, 1982. Said violations occurred on April 12 and 13, 1982.

2. That accordingly, the Burlington Northern Railroad Company be ordered to additionally compensate Carmen J. Mauter, A. Bredl, A. Coe, L. Hickman and J. Swedensky in the amount of thirty and one-half (30 1/2) hours each at the applicable wrecking rate of time and one-half for service claimed beginning April 12 through April 13, 1982.

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 April 4, 1981, a wreck occurred outside the yard limits on the Burlington Northern's main line at Otis, Colorado. Carrier dispatched its own wrecking crew complete with Pettibone Crane. Carrier's crew worked April 4 and 5 clearing the track and leaving seven (7) wrecked freight cars on the site. Carrier completed clearing the wreck site on April 12 and 13, 1981, by contracting with the Big L Company to load the remaining seven (7) damaged cars.

Carrier maintains that it chose the outside contractor because Big L, in its judgment, possessed a crane more capable of performing the task. Carrier also sent two (2) of its own Carmen to tie down the damaged rolling stock for the trip back to the repair shop.

According to Organization, wrecking work becomes the exclusive contractual province of the Carmen's Craft once Carrier calls its own wrecking crew and hence Carrier's crew was entitled to continue working the Otis wreck until the entire site was cleared on April 12 and 13, 1981.

Organization further amplifies its view by quoting from Award No. 6030 as follows: "Where, however, a wrecking crew has been called and wrecking equipment has been used, that work belongs exclusively to the Carmen. Under such circumstances there is no distinction under Rule 158 between wrecks outside yard limits and wrecks inside yard limits." Besides relying on the Collective Bargaining Agreement, Organization also cites Award No. 6257, noting Carrier's burden of justifying the use of non-Carrier wrecking crews.

Carrier views the dispute under a different theory. Thus Carrier argues that wrecking work is not exclusively reserved to the Carmen's Craft when the wreck occurs outside the bounds of the Railroad yards. Moreover, Carrier also claims that it retains the right to exercise business judgment when selecting an outside wrecking contractor. Finally, Carrier urges that a claim for 30-1/2 hours of pay in this dispute is excessive.

The Board finds Organization's arguments unpersuasive. The cited Awards indicate that while loading damaged freight cars is wrecking work, the Carmen's Craft does not have an exclusive contractual right to perform wrecking work outside of yard limits (See Awards Nos. 7157, 6257, and 6177).

The Awards also grant a Carrier discretion when assigning outside-of-yard wrecking work, so long as Management does not exercise its judgment in an arbitrary, capricious or discriminatory manner.

This case cannot be construed as an abuse of the Management prerogative.

In fact, Organization attached as its own "Exhibit H" Carrier's July 23, 1982 letter to Organization explaining the basis for its decision to use Big L. In that letter, Carrier maintained that given the site's terrain, Big L possessed superior equipment to complete the disputed task. The Board finds that Management justified its contracting decision.

The Board also finds unpersuasive Organization's reliance on the language of Award No. 6030. Simply put, the facts of Award No. 6030 are completely divergent from the facts of this case. The circumstances giving rise to Award No. 6030 revolved around an in-yard wreck. The case before the Board involves an out of yard derailment, a distinction relevant to the Agreement between the Carmen and the Burlington Northern.

Therefore, Organization has failed to prove either a contract violation or abuse of Management discretion. The Claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of June 1986.