

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 6582
Docket No. 6447
2-IC-CM-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 99, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
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(Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That the current agreement was violated when the Carrier used Hulcher Emergency Service, an outside contractor to help clean up a derailment at Magnolia, Mississippi, on August 26 and 27, 1971.
2. That accordingly the Illinois Central Railroad be ordered to compensate R. T. Boyd, R. W. Kennedy, E. G. May, L. H. Toney, who are members of the wrecker crew; and B. G. Godbold, P. E. Guy, D. L. Chase, F. D. Alexander and J. T. Dickerson, members off the overtime board, for seven (7) hours and twenty (20) minutes at overtime rate of pay for each member of the wrecker crew and members off the overtime board, for August 26 and 27, 1971.

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 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.

A derailment occurred at Magnolia, Mississippi on August 25, 1971. The McComb, Mississippi wrecker with its regular wrecking crew plus one extra groundman from the overtime board departed at 9:00 P.M. that night and worked August 26 and August 27 in the rerailing operation. The main line was blocked and a number of cars were derailed. Carrier also called Hulcher Emergency Service, a private contractor, to assist the rerailing work, this was accomplished with a crew of eleven Hulcher employees and the necessary equipment. Claimants in this matter are the regularly assigned members of the wrecking crew plus five carmen from the overtime board.

Petitioner asserts that Carrier violated the applicable agreement by the use of the Hulcher Emergency Service employees rather than its own carmen. The following rules (in pertinent part) are relied on by the Organization:

"Rule 130 - Regular assigned wrecking crews, excluding engineers, will be composed of carmen and will be paid for such service under Rule 12."

Rule 131 - When wrecking crews are called for wrecks or derailments outside of

yard limits, the regularly assigned wrecking crew will accompany the outfit...."

In its submission, Carrier took the position that the Board lacks jurisdiction over this dispute since the National Shop Craft Agreement of September 25, 1964 vested exclusive jurisdiction for disputes involving subcontracting in a Special Board of Adjustment. However, subcontracting under that Agreement is restricted solely to work covered by the classification of work rules, which does not include wrecking crew activity. In declining to take jurisdiction over a wrecking service dispute, the Special Board of Adjustment No. 570 said in Award No. 232:

"We find that wrecking work is indeed not set forth or covered in the Carmen's classification of work rule, and that this dispute is outside our jurisdiction."

See also S. B. A. No. 570 Awards 264 and 261. Further it should be noted that this Board has in the past on a number of occasions asserted jurisdiction over similar subcontracting disputes (Awards 6059, 6257, and others). For these reasons we shall deny Carrier's jurisdictional contention.

Petitioner cites Award 6257 as controlling in this dispute. In that matter we held that the Carrier ignored its obligation to justify the use of non-employees to perform wrecking service work which its own employees were available to do. Further, in that case we said:

"Our holding in Award 4190 declared that the determination as to the need for a wrecking crew was a matter of management discretion and judgement but caution that this may be successfully challenged if the Carrier's action in this regard is arbitrary, capricious, discriminatory or an abuse of managerial discretion.. it becomes incumbent upon the Carrier to offer a reasonable explanation for its need to utilize other employees and most particularly total strangers to the Railroad in place of them. Its failure to do so brings it within the limitation upon its use of its discretion and judgement referred to hereinabove."

The case before us may be distinguished from Award No. 6257 in that the Carrier in this dispute specifically and consistently alleged that the situation calling for the rerailling activity was an emergency caused by the blockage of the main track. This contention was never denied by the Petitioner. Further, Carrier contends and it is not denied that the outside contractors' equipment was needed to clear the track expeditiously. In a closely related case, Award 6490, the Organization challenged management's decision and discretion in using an outside contractor; we found that the Carrier had not established the fact of an emergency and sustained the claim.

It is obvious that the contractor's forces performed work at the derailment which normally would be performed by carmen covered by the applicable agreement (specifically a minimum) adjusting wedges and brass at the ends of the cars. We have long held that even though certain work of wrecking crews is generally recognized as carmen's work, the Carrier is not always obligated to call a wrecking crew for a wreck or derailment outside of yard limits (Award 1559). We have also held that when a wrecker is taken to a derailment it must be accompanied by the regularly assigned men in sufficient number to handle the work. (Award 2048 and others). The recognized exception to these well established principles is that outsiders (either other crafts or employees of other companies) may be used to perform wrecking crew functions under conditions of emergency (Awards 2048, 4222, 5391 1559).

In the case before us, there is evidence that an emergency existed, there is no evidence that the outside forces performed any work at the site after the emergency ceased to exist, and there is no evidence that Carrier abused its managerial prerogatives under all the circumstances. In view of the foregoing, we find that there has been no violation of the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of November, 1973.