



The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This dispute involved the question of whether or not the Carrier violated the labor agreement in contracting out the work of clearing up train wrecks and derailments outside the yard limits of the Federal Shop located at Alton, Illinois. The sequence of events leading up to this dispute were as follows:

(1) On March 6, 1970 the Carrier posted a notice retiring a steam derrick and its associated wrecking equipment. Future wrecking equipment would consist of the XM52-XM50 mobile lighting system located at the Federal Shops and the XM51 located at the Decatur, Illinois rip track.

(2) On March 11, 1970 the Carrier had a derailment at Madison, Illinois (outside the yard limits of the Federal Shops) and contracted out the services of 2 bull dozers and 6 men for 4 hours to clear the derailment.

(3) On March 17, 1970 the Carrier had another derailment at Madison, Illinois (again outside the yard limits) and contracted out for the services of 6 employees and equipment for 10 hours to clear the derailment.

(4) On April 2, 1970 the Carrier had a derailment at Sandent near Collinsville Illinois. This derailment was outside the yard limits of the Federal Shops and the Carrier contracted out for labor and equipment service on April 2 and April 3, 1970.

(5) On April 14, 1970 the Carrier had a derailment near Edwardsville, Illinois outside the yard limits of the Federal Shops. Carrier contracted out the labor services of 5 men for rerailling the flat cars.

The Organization cited Rule 127 and Rule 128 of the current agreement,  
to wit:

"Rule 127  
Wrecking Crews

Regularly assigned wrecking crews, including engineers and fireman, will be composed of carmen, and will be paid for such service under Rule 10.

"Meals and lodging will be provided by the company while crews are on duty in wrecking service.

When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification."

"Rule 128

When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

The Carrier's position was that a majority of awards on the Illinois Terminal covering the subject matter have been decided in favor of the Carrier (Second Division Awards 3023, 3889, 3991 and 4125).

This instant award will be the fruit of reason ripened by the precedence of prior awards before the Board. In Award 6210 a derailment of the Carrier's equipment occurred while operating on the tracks of the Illinois Central Railroad. The substance of the award was that derailment work was the responsibility of the Illinois Central and the fact that the Carrier held trackage rights on the Illinois Central did not give the instant Claimants the right to clear Illinois Central tracks.

In Award 264 of Special Board of Adjustment No. 570 in a wreck outside the yard limits, the Carrier called out their XM52 wrecking crane with 3 men as well as an outside contractor with 2 bulldozers and 6 employees. In denying this claim, Award 264 placed strong emphasis on the Organization's requesting a rule revision to the Carmen's Classification of Work rule number 124 - the request would add wrecks and derailments to the carmen's work.

In Award 6324 (Referee D. J. Harr) involving a derailment outside the yard limits, this Board denied the Organization's claim because the Organization had filed a Section 6 Notice requesting the amendment of the Carmen's Classification of Work Rule and this Board held that this was recognition by the Organization that existing rules did not give the carmen the exclusive right to wrecking service.

In Award 6325 (Referee D. J. Harr) the Carrier called 6 employees of their own wreck crew as well as an outside contractor's equipment with 3 employees. The contractor equipment included a "bulldozer-crane" to assist in the wrecking service.

The Referee for the instant dispute notes that merits of Award 6324 and 6325 were distinguishable in that in 6324 the award did not show that the Carrier used any of their own employees and in Award 6325 the Carrier used their own employees as well as employees of an outside contractor.

In Award 4836 involving the Elgin, Joliet & Eastern Railway Company and the Carmen, the Organization cited rule 131 which reads exactly like rule 128 of the instant dispute except there was a proviso "the regularly assigned crew will, if necessary, accompany outfit." In Award 4836 this Board cited Award 1327 where the words "if necessary" were not used; and, in Award 1327, a crane other than wrecking crew's crane was used. Award 4836 continued citing Award 1327 by stating:

"Based upon the facts of this case we find that under the applicable rules the Carrier had a definite responsibility to call these claimants to perform the wrecking service in question. The job necessitated the use of hoist, jacks and other tools of this craft, as well as the making of repairs to the cars involved. No emergency was involved and the claimants were available for assignment. A properly equipped wrecking crew was needed and the equivalent specially recruited."

In Award 6257 (Shapiro) this Board cited Award 1757 (Carter), to wit:

"We think the applicable rules governing wrecks or derailments outside of yard limits mean as follows:

(a) That crews assigned to wreckers or wreck trains, excluding engineers, will be composed of carmen.

(b) When a wrecker or wreck train is called for wrecks or derailments outside of yard limits, the regularly assigned crew of carmen are entitled to accompany the outfit.

(c) If a derrick, crane or other wrecking equipment operated by employees of another craft is used in lieu of an available wrecker and crew, a violation of the agreement ordinarily exists.

(d) When a derailment occurs outside of yard limits and the services of a wrecker are not required, the wrecking crew do not have the exclusive right to perform the work.

(e) If a wreck or derailment necessitates the doing of work within the carmen's scope rule, a carman is entitled to perform the work.

(f) A train crew may properly rerail a locomotive or car, when the assistance of a wrecker is not required, without encroaching upon the rights of carmen.

(g) The use of section foremen, section laborers or other employees to rerail a car or locomotive, when a wrecker is not needed, does not violate the carmen's agreement.

"(h) Others than carmen may properly rerail locomotives and cars, when a wrecker is not called or needed, by the use of jacks, frogs, rerailers, blocks, and similar expedients, but this does not imply that such employees may invade the work of carmen specified in their Classification of Work Rules."

In Award 1322, a dispute involving similar circumstances, this Board said:

"The word 'When' in the sentence from Rule 131, providing:

'When wrecking crews are called for wrecks or derailments outside the yard limits, the regularly assigned crew will accompany the outfit.'

is a conditional word, indicating that the parties contemplated that in some circumstances wrecking crews would not be called to the scene of wrecks and derailments."

In Award 1482 the Board said:

"It is only when a wrecker is required that all wrecking work is assigned to carmen. ... Consequently when a derailment occurs outside of the yard limits, as here, and the services of the wrecker are not required, the wrecking crew (carmen) do not have the exclusive right to perform the work."

In Award 6257 sustaining the Organization's claim, the XM52 wrecker truck with a crew of three carmen was dispatched from the Federal Shops.

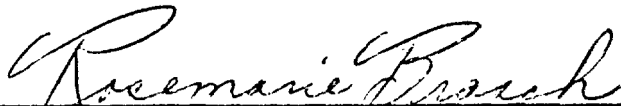
In the instant disputes there was no evidence to show that a wrecker was dispatched from the Federal Shops nor did the evidence show that a wrecker was furnished by any other facility. There was no evidence to show that a bulldozer as used in the instant dispute replaced a crane or derrick. Therefore the work done would logically fall under item (d) in Award 1757 and the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of November, 1973.