Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6602
Docket No. 6473
2-SOO-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. 66, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Soo Line Railroad Company

Dispute: Claim of Employes:

1. That under the provisions of the current controlling agreement, the Carrier on January 9, 10 and 19th, 1971, violated said agreement by augmenting the Harvey North Dakota wrecker and wrecking crew with the Burlington Northern Railroad equipment (side winder) and manpower in rerailing two sulphur tank cars, which were in a derailment that occurred January 3, 1971, in lieu of the Shoreham wrecker and wrecking crew.

2. That accordingly, the following eight (8) of the nine (9) regularly assigned members of the Shoreham Shop wrecking crew who were ready and available be compensated twenty-four (24) hours travel time to and from derailment plus the thirty (30) hours in re-railing for a total of fifty-four (54) hours time and one-half pay each:

J. Jedinak	J. Krawczyk
J. Brinda	S. Krepis
J. Warhol	W. Vados
M. Sarich	G. Dadovich

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.

On January 3, 1971 a wreck occurred at Manfred, North Dakota, derailing ten cars. Carrier's Harvey, North Dakota wrecker and crew were dispatched to the scene (approximately ten miles away). On January 4th the wrecker worked unassisted the wreck but was assisted on January 5th by a Burlington Northern mobile wrecker and operator for about five hours. Later that day the crew was assisted by two D-9 cats from a private contractor; they also were used on the following day. Two tank cars loaded with liquid sulphur could not be rerailed because of their

extreme weight. Wrecking activity was suspended until January 9, 1971 when the Burlington Northern mobile crane again became available. Carrier's Harvey wrecker and crew and the Burlington Northern mobile crane worked on the wreck on both January 9th and 10th, when the Burlington Northern equipment broke down and had to be returned to base for repairs. On January 18th the Burlington Northern equipment again became available and assisted Carrier wrecker in completing the rerailing of the two tank cars.

Claimants are members of the Shoreham Wrecking Crew, based in Minneapolis, Minnesota, about 400 miles from the scene of the wreck. Petitioner alleges violations of Rules 28 and 98 in the use of the Burlington Northern equipment and crew to assist the Harvey wrecking crew on January 9, 10 and 19th, 1971 in lieu of the Shoreham wrecking crew.

Rule 28 provides in pertinent part:

"1. None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foreman at points where no mechanics are employed."

Rule 97, in part, provides:

"Regularly assigned wrecking crews (not including cooks) will be composed of carmen ... and will be paid for such service under Rule 10."

Rule 98 provides:

"When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit...."

Petitioner asserts that wrecking service is generally recognized as carmen's work and such work is considered to be under the Classification of Work Rule 94 by virtue of the phrase "... and all other work generally recognized as carmen's work". Petitioner cites, among other awards, our statement in Award 1559 that wrecking work in general belongs to carmen. We find no fault in that conclusion, but at the same time we do not agree with the Organization's extension of that generalization; we do not agree that wrecking work outside a yard is exclusively the work of carmen. There is no rule support for that position and further in numerous awards dealing with similar rules we have reaffirmed that principle (see for example Awards 6177, 6218, 6286, 6324 and 6361).

It must be noted that no claim is before us for outside work on January 5th and 6th. No explanation has been made as to this omission.

Carrier asserts that it has been a long accepted past practice on this property to use the services of both outside contractors and other railroads to assist its wrecking crews at derailments. The Organization admits this practice

but argues that this was only true in emergencies and when two of Carrier's wreckers and crews were being used. Petitioner further argues that outside contractors were used to assist Carrier's wrecking crews, not to replace them. In support of its position on past practice Carrier referred on the property to several disputes on the same issue which had never been resolved or brought to this Board, but had been permitted to lapse by the Organization. We recognize that these cases do not, under the rules, constitute a precedent. However Carrier referred to affidavits presented during the consideration of those cases, and presented those affidavits with its submission. Those affidavits may not be normally considered as evidence under our rules, but in this instance the Organization acknowledged that it had been aware of them and cited their contents in support of its position. The affidavits in substance indicate that Carrier had for many years hired outside contractors and their equipment to assist in rerailing activities at wrecks. Petitioner has submitted no evidence whatever in support of its position that such outside contracting was done only in emergency situations and after two wrecking crews were used.

In a closely related dispute, Award 5005, we said: "The burden of establishing all essential elements of the claim rests on Petitioner and here it has submitted no facts to show how Rule 67 was interpreted in actual practice on the property." It would seem reasonable to assume that Carrier should govern its operating decisions on at least tacitly accepted past practice. The only new factor in the current dispute seems to be the use of a mobile crane in the rerailing activity (by an outside employer) rather than merely a tractor or bulldozer. We can find no significant distinction in this circumstance.

This Board has rendered many awards dealing with the problems of interpreting rules concerning wrecking service. The parties have both cited a number of such awards in this dispute. We find, however, in view of the past practice, without either affirming or denying the Board's previous principles, the circumstances surrounding this particular dispute on this Carrier's property warrant our finding 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 28th day of November, 1973.