

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6840
Docket No. 6704
2-ICG-CM-'75

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

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

Dispute: Claim of Employees:

1. That the Carrier improperly used employes of a private company and their equipment to assist the wrecking crew in performing wrecking service on May 13, 1973, at Trimble, Tennessee.
2. That accordingly the Illinois Central Gulf Railroad be ordered to compensate C. E. Corder, B. A. Barnhill, J. D. Lamkin, Conley Lamkin, W. P. Sanders and J. E. Fonville, Carmen, Paducah, Kentucky, and members of the Paducah wrecking crew, twenty-one and one-half (21-1/2) hours each at the overtime rate of pay.

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.

Parties to said dispute waived right of appearance at hearing thereon.

On Sunday, May 13, 1973, at approximately 7:30 A.M., thirty-five cars were involved in a derailment inside the City of Trimble, Tennessee, causing blockage of the Carrier's main line and passing track. Trimble, Tennessee is a distance of 93.6 rail miles north of Memphis, Tennessee and 72.7 miles from Paducah, Kentucky. The Memphis, Tennessee wrecker was listed at 9:30 A.M. and arrived at Trimble, Tennessee at 7:30 P.M. Also, the Hulcher Emergency Railroad Service Company, an outside contractor, arrived at Trimble at approximately 7:30 P.M. The Memphis wrecking crew, with access only to the south-bound track, was released after clearing the south-bound track. Hulcher remained and was used exclusively to clear up the north-bound track. On May 17, 18, and 19, the Memphis and Paducah wreckers were used to pick up the wrecked cars.

The Organization contends that the Paducah wrecker should have been used on the 13th with the Memphis wrecker. The Carrier contends that the main line and passing track blockage was an emergency; and that because of the nature of the derailment, the Paducah wrecker was not of any benefit and thus was not called.

The applicable standards for deciding this controversy are developed from Award 6582. They are: (a) did an emergency exist, (b) did outside forces perform work at the site after the emergency ceased to exist, (c) did Carrier abuse its managerial prerogative, under all the circumstances.

It cannot be doubted that Carrier is justified in using outside forces to perform wrecking services where a compelling emergency exists. See Awards 6490, 6582, 6668, 6703. However, the Carrier has the burden of establishing that indeed such an emergency existed. In the present case with 35 cars derailed or turned over within the City of Trimble, Tennessee causing blockage of the Carrier's main line and passing track, we find that a compelling emergency did exist. Further, the Memphis and Hulcher crews both arrived at the same time and set out immediately and continuously to clear the blockage work assigned each crew. (In Award 6490, the Board found that, among other significant matters, there was no compelling emergency because the Hulcher crew arrived at 9:30 P.M. and then waited seven and one-half hours to start operations. So also this Board was not persuaded that a compelling emergency actually existed in Award 6668 where, among other significant matters, the Carrier's wrecking outfit was listed for 12:40 A.M. on February 8, and the Hulcher crew did not arrive to the wreck site until 6:00 P.M. that evening, were relieved an hour later, and did not return until 7:00 A.M. on February 9th.)

We find that there is no evidence whatsoever that Hulcher forces performed work at the site after the emergency ceased to exist. The Carrier utilized both the Memphis and Paducah outfits on May 17, 18 and 19 to pick up the cars. (See Award 1559 where an outside contractor was used for six days and the Board found that the emergency ceased at the end of the second day; and the Board sustained a claim only for the four days after the emergency ceased to exist.)

We find under all the existing circumstances of the record before us, that the Carrier reasonably exercised its honest judgment and did not abuse its discretion.

A W A R D

Claim denied.

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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 7th day of April, 1975.

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

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

Dispute: Claim of Employes:

1. That the Carrier improperly used employes of a private company and their equipment to assist the wrecking crew in performing wrecking service on May 13, 1973, at Trimble, Tennessee.
2. That accordingly the Illinois Central Gulf Railroad be ordered to compensate C. E. Corder, B. A. Barnhill, J. D. Lamkin, Conley Lamkin, W. P. Sanders and J. E. Fonville, Carmen, Paducah, Kentucky, and members of the Paducah wrecking crew, twenty-one and one-half (21-1/2) hours each at the overtime rate of pay.

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.

Parties to said dispute waived right of appearance at hearing thereon.

On Sunday, May 13, 1973, at approximately 7:30 A.M., thirty-five cars were involved in a derailment inside the City of Trimble, Tennessee, causing blockage of the Carrier's main line and passing track. Trimble, Tennessee is a distance of 93.6 rail miles north of Memphis, Tennessee and 72.7 miles from Paducah, Kentucky. The Memphis, Tennessee wrecker was listed at 9:30 A.M. and arrived at Trimble, Tennessee at 7:30 P.M. Also, the Hulcher Emergency Railroad Service Company, an outside contractor, arrived at Trimble at approximately 7:30 P.M. The Memphis wrecking crew, with access only to the south-bound track, was released after clearing the south-bound track. Hulcher remained and was used exclusively to clear up the north-bound track. On May 17, 18, and 19, the Memphis and Paducah wreckers were used to pick up the wrecked cars.

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It cannot be doubted that Carrier is justified in using outside forces to perform wrecking services where a compelling emergency exists. See Awards 6490, 6582, 6668, 6703. However, the Carrier has the burden of establishing that indeed such an emergency existed. In the present case with 35 cars derailed or turned over within the City of Trimble, Tennessee causing blockage of the Carrier's main line and passing track, we find that a compelling emergency did exist. Further, the Memphis and Hulcher crews both arrived at the same time and set out immediately and continuously to clear the blockage work assigned each crew. (In Award 6490, the Board found that, among other significant matters, there was no compelling emergency because the Hulcher crew arrived at 9:30 P.M. and then waited seven and one-half hours to start operations. So also this Board was not persuaded that a compelling emergency actually existed in Award 6668 where, among other significant matters, the Carrier's wrecking outfit was listed for 12:40 A.M. on February 8, and the Hulcher crew did not arrive to the wreck site until 6:00 P.M. that evening, were relieved an hour later, and did not return until 7:00 A.M. on February 9th.)

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We find under all the existing circumstances of the record before us, that the Carrier reasonably exercised its honest judgment and did abuse its discretion.

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Claim denied.

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National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of April, 1975.