

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6841  
Docket No. 6711  
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 current agreement was violated when the Carrier used Hulcher Emergency Railroad Service, an outside contractor to help clean up a derailment at Hickory, Kentucky, on April 28, 1973.
2. That accordingly the Illinois Central Gulf Railroad be ordered to compensate J. E. Fonville, Conely Lamkin, J. D. Lamkin, L. V. Beckham, F. J. Kaufman and R. E. Seay who are members of the wrecking crew for twenty-four (24) hours each at the overtime rate for April 28, 1973.

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.

At approximately 3:45 A.M. on April 28, 1973, a freight train derailed on the Carrier's main line at Hickory, Kentucky, some 16.5 miles from Paducah, Kentucky, Paducah having a complete wrecking outfit with a 120 ton derrick. The locomotive and first 23 cars of the train remained on the track, but cars 24 through 51 were derailed: cars 52 through 80 remained on the track. Part of the wreckage included an overturned 38,000 gallon tank car loaded with anhydrous hydrofluoric acid. Further, the derailment crushed a 1,000 gallon ammonia tank located in an adjacent field. A number of residents of the community were evacuated and seven residents were overcome by fumes and were taken to a local hospital for observation. Company officials had to

wait some three hours for the ammonia gas to dissipate to inspect the wreckage and determine a course of action. It was the Carrier's decision that the uprighting of the acid tank car would be extremely dangerous and that such an undertaking would require the expertise of Hulcher Emergency Railroad Service. Further, it was the Carrier's decision that Hulcher's off-track equipment was necessary to expeditiously clear the main line blockage and the passing track blockage. Hulcher forces arrived at the scene at 1:30 P.M., utilized 4 caterpillars to upright the 38,000 gallon acid car and opened up the main line to traffic by 8:00 P.M. After the main line was opened to traffic, both the Paducah and the Memphis wreckers were dispatched to the site to rerail and pick up the cars on May 20, 21, and 22.

The Organization contends that the Paducah wrecking outfit being only a distance of 16.9 rail miles from the derailment could and should have been called to perform the work as there was a passing track at the site of the derailment that could have been used by the Paducah outfit. The Carrier objects to the implication that a standing wrecking outfit was on duty at Paducah capable of immediate response; and elaborates the timely process of calling a rested train crew, deadheading the crew to Paducah, and then getting the work train to the derailment site. Further, the Carrier contends that due to the extensive blockage of and the resulting damage to the main line and passing track, the Paducah wrecker was precluded from useful service in eliminating the emergency.

The Organization contends that while an emergency did exist because of the escaping ammonia gas, when the air was cleared of gas, the emergency ceased to exist, and the Carrier had the obligation to engage its own equipment. The Carrier contends that in addition to the emergency of the escaping ammonia gas, there existed the emergency situation of the overturned acid car and the total emergency of the extensive main line blockage.

The Organization contends that the Paducah derrick could have easily uprighted the acid tank car, and thus no emergency existed in this regard. The Carrier contends that four off track caterpillar tractors were required; and that damage to the main line and spur track precluded a derrick from reaching this particular tank car and others as well.

The Organization contends that the Carrier could have rerouted their trains from the main line to by-pass the Hickory derailment: thus making the main line blockage not an emergency. The Carrier contends that the Organization's proposed route could not manage the flow of traffic which the main line accomplishes; and the cost to the Carrier would be greatly increased in the transfer of products to nearby Mayfield.

The Organization contends that panel rail was available. The Carrier disagrees. The Organization and Carrier disagree as to how much of the siding was torn up.

In Award No. 6840 we made reference to the applicable standards for deciding such a controversy as exists in the present case as developed from Award 6582. They are: (a) did an emergency exist, (b) did outside forces perform work at the site after the emergency ceased, (c) did the Carrier abuse its managerial discretion.

We find from all of the evidence of the record in the present case, that a compelling emergency did in fact exist. We find there is no evidence that the Carrier utilized outside forces to perform work after the emergency ceased. Hulcher forces cleared the main line blockage and then secured its operations. The Paducah and Memphis wreckers were dispatched to the site to reraill and pick up the cars on May 20, 21 and 22. We find that the Carrier has not abused its managerial discretion.

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 7th day of April, 1975.

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