

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (System Federation No. 10, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Denver and Rio Grande Western Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement the Denver and Rio Grande Western Railroad Company improperly assigned other than Carmen (wrecking crew members) to assist in clearing up derailment at Dell, Colorado beginning January 23, 1974.
2. That accordingly, the Denver and Rio Grande Western Railroad Company be required to compensate wrecking crew members assigned to outfit #028, i.e., W. Runge, J. Carson, P. Schmidt, H. Stephens, W. Pace, R. Johnson, L. Lupton and L. Barnes, ninety-eight (98) hours each at the time and one-half ($1\frac{1}{2}$) rate.

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.

Claimants were members of Wrecking Outfit No. 028 headquartered at Grand Junction, Colorado. On January 23, 1974 the Claimants were called for a derailment at Dell, Colorado involving two diesel locomotives and 23 cars. Also called was a wrecking outfit from Denver, Colorado. After the main line was cleared Claimants were returned to Grand Junction, and a private contractor (Hulcher Railway Equipment Company) with its own employes assisted the Denver crew in handling the wrecked cars. The Organization alleges that Hulcher's crew worked 98 hours in performing the work. It appears from the record that Claimants were returned to Grand Junction "in order to be in position to protect territory around that point for other possible derailments", after Carrier determined that Claimants and their wrecker equipment was no longer required at Dell. It further appears from the record that the

Hulcher employes assisted the Denver crew working with three off-track D-8 bulldozers (with side boom attachments) in rerailling the cars and clearing up the wreck site.

Carrier states that Hulcher employes were utilized after the emergency was over (clearing the main line). Carrier takes the position that it exercised managerial prerogative in deciding that both the Denver and Grand Junction Wrecking units were not required, and in deciding to return the Grand Junction to its Utah Division. Carrier further contends that the practice on this property is to use outside bulldozers with side booms to assist the railroad derrick equipment.

The Organization takes the basic position that once the wrecking crew is called and used it is entitled, under the terms of Rule 41, to perform all of the work incident to the derailment; and outside contractors cannot perform the work.

Rule 41(c) provides in pertinent part:

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

The above-quoted portion of Rule 41(c) is commonly used throughout the railroad industry, and numerous awards of this Division have consistently interpreted such language to mean: 1) If a wrecker or wreck train is called for a derailment outside yard limits the regularly assigned crew of Carmen are entitled to accompany the outfit and perform the work; 2) If a derrick, crane, or other equipment that is part of a wreck train is used by members of another craft or independent contractor, a violation of the agreement normally occurs in the absence of an emergency; 3) When a derailment occurs outside of yard limits and the services of a wrecker are not required, the wrecking crew does not have the exclusive right to perform the work; and 4) Other than Carmen may reraill a locomotive or car when a wrecker is not needed, and this does not encroach upon the rights of Carmen.

In order for Claimants to prevail in this dispute, it must be shown that the services of a wrecker were required for the work performed by Hulcher employes. There is no such showing in this record, and the claim must be denied.

A W A R D

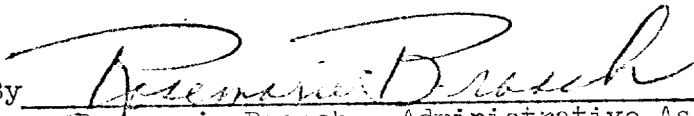
Claim denied.

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Award No. 7526
Docket No. 7117
2-D&RGW-CM-'78

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 

Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of May, 1978.