

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Chicago, Rock Island and Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the terms of the applicable Agreement the Carrier failed to call the required Carmen to relieve an outside contractor's employees being used as groundmen at an eighteen car and one engine derailment at Summerfield, Missouri on November 28, 1975.
2. That accordingly the Carrier be ordered to pay Carmen R. K. Haynes, O. L. Fain, R. E. Kisro, E. E. Thomas and A.L. Crain forty-two (42) hours' pay each at the time and one-half 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 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 claim alleges violation of an Agreement between the parties dated May 27, 1971. That Agreement reads, in pertinent part, as follows:

"1. The Organization recognizes that the carrier has the unrestricted prerogative to lease, rent or otherwise secure equipment or machinery to assist in the work involved resulting from derailments. This includes the use of the operators of such equipment along with others who are required for the operation and use of such equipment or machinery.

2. In addition to Item 1, above, it is recognized that when, as result of a derailment, train operations have been restricted it is entirely proper to use other than

"employees represented by the Carmen's Organization to serve as 'groundmen' in the performance of work which is normally performed by carmen but only until such time as they can be relieved by carmen who will be called simultaneously with the 'groundmen' to be relieved.

NOTE: Carmen sent to the derailment will relieve such other 'groundmen' within thirty minutes following their actual time of arrival at the scene of derailment."

One of Carrier's freight trains was involved in an accident in which eighteen (18) freight cars and a locomotive became derailed. Carrier called the Isringhausen Rerailing Service with its employees to perform the work. At the same time, two (2) carmen were called but no Isringhausen employees were released when the Carmen began work.

The Agreement between the Parties dated May 27, 1971, is designed for such emergencies and provides that Carmen will be called simultaneously with any non-carmen who may be called and will relieve such other "groundmen" (non-carmen) within thirty (30) minutes following their arrival at the scene of the derailment. Claimants had a contractual right to the work involved and should have been called. That Claimants were working on the Rip Track is not a defense recognizable under the May 27, 1971 Agreements. The claim must be sustained.

A W A R D

Claim sustained.

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 30th day of May, 1978.