

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { System Federation No. 4, Railway Employees'  
{ Department, A. F. of L. - C. I. O.  
{ (Carmen)  
{ Chesapeake and Ohio Railway Company

Dispute: Claim of Employes:

1. That the controlling agreement was violated and the Carrier was arbitrary, capricious, and discriminatory and an abuse of managerial discretion when the Chesapeake and Ohio Railway Company used Hulcher Emergency Railroad Service Company an outside contractor to clean up derailment at Ensel Yards (within yard limits) Lansing, Michigan, on November 27, and November 28, 1975.
2. That accordingly the Chesapeake and Ohio Railway Company compensate the following nine (9) regular assigned wrecking crew members for seven (7) hours and ten (10) minutes at time and one half (1½) or ten (10) hours and forty five (45) minutes plus one (1) hour prep time (straight time rate) for a total of eleven (11) hours and forty five (45) minutes for each man.

<u>Working No. &amp; Name</u>	<u>Title &amp; Rate of Pay per Hour</u>	<u>Total</u>
1. 2444947- W. Ritzenhein-	Wreckmaster- \$5.78	\$67.92
2. 2480762- L. Klocke	- Engineer - 5.72	67.21
3. 2444877- L. Olewinski	- Fireman - 5.66	66.51
4. 2444903- L. Potter	- Cook - 5.66	66.51
5. 2445079- M. Day	- Groundman - 5.72	67.21
6. 2444726- G. Dawson	- Groundman - 5.66	66.51
7. 2444849- P. Hodges	- Groundman - 5.66	66.51
8. 2445075- P. Smith	- Groundman - 5.66	66.51
9. 2444987- D. Ziel	- Groundman - 5.66	66.51
Total		\$601.40

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.

Carrier contends that it was exercising its managerial rights when it decided to use the Hulcher Emergency Railroad Service Company to clear the derailment within the yard limits at Ensel Yards, Lansing, Michigan. It readily concedes the non-existence of an emergency situation, but strongly asserts that the language of Rule 130, Working Crews, particularly the first sentence thereof beginning with the word "when" unmistakably vests management with the discretionary authority to decide on the most expedient method of handling derailments and adduced a litany of adjudicated cases to substantiate its position.

Claimants, on the other hand, aver that the Board has long held that management's discretion in using or not using wrecking crews for wrecks is not absolute and must be justified by a compelling showing that an emergency exists or that its own equipment could not do the work.

While we recognize that no single award is squarely on point with the fact specifics of this case, we do find after a careful analysis of many of them, a common thread of decisional consistency to conclude that Carrier's managerial prerogatives are not absolute. Similarly, we find that the work in question does not exclusively accrue to the wrecking crews. (See for example, Award 6322).

We agree, however, with Carrier's argument that it must possess the right to determine when to use wrecking crews, but we must note, correlatively, that this is not an unrestrained prerogative. It may be challenged. For instance, we stated in Award 6257 that, "our holding in Award 4190 declared that the determination as to the need for a wrecking crew was a matter of management discretion and judgement but cautions that this may be successfully challenged if the Carrier's action in this regard is arbitrary, capricious discriminatory or an abuse of managerial discretion." (See also Award 3629)

Accordingly, Carrier must offer an explanation for its decision to use forces other than the contractually specified wrecking crews, otherwise why incorporate such a provision in the collective bargaining agreement.

The potential for unnecessary litigation is too great. In the instant case, Carrier states that it was essential to use the outside contractor since its local supervision technically determined that special off track equipment, which it didn't possess, was needed to clear the derailment. It asserts that said equipment was not equivalent to a wreck outfit.

Claimants dispute this assessment and argue that the equipment was in reality, bulldozers with a boom to lift the cars to rerail them. It contends that the Grand Rapid's Wrecking Crew could have performed this work.

In this connection, we are mindful of our ruling in Award 6847, where we held that, "Awards of this Division have held that wrecking service work belongs to the wrecking crew when a derrick or similar equipment is used, unless the use of a substitute for the derrick is necessitated by an

emergency". While an emergency was not contended herein, we believe that the equipment used was not a derrick equivalent and that Carrier met its obligation under the Agreement.

We will deny the claim.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of January, 1979.