

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. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

- (1) That the Missouri Pacific Railroad Company violated Article VII, Section 1 and Note to Section 1 of the Agreement of January 12, 1976 when they contracted out the work of rerailing two (2) freight cars at Bonita, Louisiana to the Hulcher Emergency, May 12, 1976.
- (2) That the Missouri Pacific Railroad Company be ordered to compensate Carmen H. A. Armstrong, H. E. Ison, P. A. Piechoski, M. H. McGary, M. T. Linz, B. G. Pruitt, W. A. Hamilton, A. J. Lewis, J. D. Waddle, and J. D. Cantrell in the amount of twenty-six (26) hours at the pro rata 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.

Claimants assert that Carrier violated Article VII Section 1 and note to Section 1 of the January 12, 1976 Agreement, when it contracted out the work of rerailing two (2) freight cars at Bonita, Louisiana to the Hulcher Emergency Service on May 12, 1976.

Carrier argues that the wrecking crew was not reasonably accessible as defined in the Note to Section 1 of Article VII, so there was no basis for using the North Little Rock Wrecking Crew.

Our review of this provision reveals that once Carrier calls an outside contractor to perform wrecking service work, it is contractually obligated to call a sufficient number of its assigned wrecking crew to work with the contractor.

The second sentence of Article VII, which reads, "The contractor's ground forces will not be used, however, unless all available and reasonably accessible members of the assigned wrecking crew are called" specifically mandates that the contractor's ground forces will not be used unless all available and reasonably accessible members of the assigned wrecking crew are called. We do not find that Carrier complied with the letter of this requirement. It was under an explicit obligation to call these carmen first. It did not do so. They were reasonably accessible and available.

Moreover, while we recognize the reasoning behind claimant's pro rata compensatory claim, we cannot award this amount. We will sustain the claim, however, for nine (9) hours and fifty-seven (57) minutes at the straight time rate for three (3) carmen only and remand the decision as to which three carmen should receive this adjustment to the property.

This determination reflects the total number of hours the contractor was used to perform the needed work using three (3) men and its round trip travel time which was six (6) hours and twenty-four (24) minutes.

A W A R D

Claim sustained to the extent expressed in the Findings.

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 7th day of February, 1979.