

7. Mike Fermstone
2-6-77 - 15 hrs. - time and one half
2-7-77 - 19 hrs. - time and one half

8. Ben Padilla
2-6-77 - 15 hrs. - time and one half
2-7-77 - 10 hrs. 30 min. - time and one half

That accordingly the Soo Line R.R. be ordered to additionally compensate the above mentioned Carmen and the above specified amounts of hours at the time and one half rate of pay.

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.

The claimants are members of the Schiller Park, Illinois, wrecking crew and are Carmen. On February 6, 1977, a derailment occurred at Duplainville, Wisconsin, at 8:15 a.m. Twelve cars blocked the single main line connecting Chicago with all carrier facilities to the west. Some 955 feet of main line tracks were torn out. The carrier utilized Berg and Henn, an outside contractor which is based at Appleton, Wisconsin, about 120 miles from the scene of the derailment. The Schiller Park wrecker is located about 70 miles from the scene of the derailment. No ground personnel from the outside contractor were used. Three Carmen were dispatched from Fond du Lac, Wisconsin, and departed Fond du Lac at 9:00 a.m. on February 6, and returned at 11:00 a.m. on February 7. The main line was cleared of cars by 7:30 a.m. on February 7, 1977. The cars were cleared of the derailment site and rerailed before the restoration of the torn up track. The track was restored and open for traffic at 6:00 p.m. on February 7. This result could not have been accomplished with the Carrier's wrecker because that wrecker would have been required to wait until the main line was fully restored before it could rerail the cars. The Organization contends that the Carrier violated the following Rules, which are contained in the Agreement:

"Rule 28 (Pertinent part). None but mechanics or apprentices regularly employed as such shall do mechanics work as special rules of each craft."

"Rule 94 (Pertinent part). Carmen's work shall consist of building, maintaining, dismantling, painting, upholstering and inspecting all passenger and freight cars both wood and steel."

"Rule 97 (Pertinent part). Regularly assigned wrecking crews will be composed of Carmen including the engineer if competent man is available and will be paid for such service under Rule No. 10."

"Rule 98. When wrecking crews are called for wrecks or derailments outside yard limits a sufficient number of the regularly assigned crew will accompany the outfit, for wrecks or derailments within yard limits sufficient Carmen will be called to perform the work."

The Organization contends that the Carrier should have used the Schiller Park wrecking crew of 8 Carmen rather than the outside contractor or the Carmen from Fond du Lac. The facts demonstrate that the Carrier's wrecker at Schiller Park could not have been used because the Carrier does not have mobile equipment. Through the utilization of the mobile equipment of the contractor, the Carrier was enabled to clear the line of cars and reraill them rather than being forced to rebuild the track before being able to get Carrier equipment to the site to perform the work. The Carrier claims a right in this situation which it labelled as an emergency to use its management discretion in determining whether to use an outside contractor.

The claim here is for payment to the Schiller Park wrecking crew for time the crew would have worked had they been called for this derailment. A similar claim arose on this property and was the subject of the determination in Award No. 6757. This Board held that the Carrier's determination was proper and denied the claim. The Board in that case stated:

"As stated in our recent Award 6602, 'This Board has rendered many Awards dealing with the problems of interpreting rules concerning wrecking service...'
In Award 6257 we reviewed at length a number of the Awards in which the criteria to be applied are clearly and definitively delineated. (See Award 6177 (Simons)) and Awards cited therein; the lengthy quotation from Award 1757 (Carter); and the most significant statements in Award 4190 (Anrod). Although, Award 6257 sustained the claim therein because of the specific facts pertaining therein; it states that we find no warrant to 'disturbing the basic concept underlying the ... cited Awards ...'
The key facet applicable to the instant claim is '... the determination of a need for a wrecking crew ... involves

"management discretion and judgment ... Carrier's decision can successfully be challenged before this Board only on the ground that it was arbitrary, capricious, discriminatory or an abuse of managerial discretion..." (Award 4190)" (Emphasis supplied)

The Board considers Award No. 6757 applicable to the facts in this case and holds that management, under the circumstances presented here, had a right to use an outside contractor.

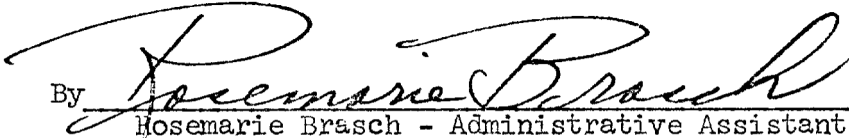
The Organization also claims the existence of a past practice. This claim is not supported by the record and this Board has held that wrecking work outside a yard is not exclusively the work of Carmen. See Award No. 6602, which involves a similar dispute between the same parties as those involved in the case before this Board. The Board has considered Awards No. 6840, 6490 and 6847, cited by the Organization and finds them inapplicable here. We find that the Carrier's conduct did not violate the controlling Agreement.

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 20th day of June, 1979.