

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart 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 Rule 120 of the Controlling Agreement as amended November 1, 1974 and Article V of the Agreement of January 12, 1976 when they contracted out the work of rerailling diesel units No. 1630 and 1632. March 16, 1976, while the diesel units were derailed in the Harlingen, Texas train.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen L. L. Hurley, J. J. Canell, and V. Vela in the amount of eight (8) hours each at the punitive rate account said violation.

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.

Two of Carrier's road diesel units derailed in Carrier's switching yard at Harlingen, Texas on the morning of March 16, 1976. One unit, No. 1630 was rerailled using rerailling blocks and a yard engine to supply the power to pull the unit back on the rails. The second unit, No. 1632 could not be rerailled in the same manner. Carrier engaged the services of a contractor to use his two mobile cranes with his operators. Said contractor used two mobile cranes with two operators along with the contractor's three groundmen in rerailling Diesel Unit No. 1632. The two Carmen who had begun work rerailling Unit No. 1630, remained to assist in the rerailling of Unit No. 1632. However, because three of the contractor's groundmen were used and no additional Carmen were called, the instant claim was filed. Claimants were not on duty at the time of the derailment.

Carrier asserts the time consumed in the rerailment was not in excess of 4 hours and 15 minutes, to wit - from 10:15 AM until 2:30 PM. The Employees assert that 8 hours were consumed, to wit - 8:00 AM to 4:00 PM.

The Employees argue that Carrier operates a train yard and light repair track at Harlingen, that there were carmen employed in the Harlingen, Texas train yard and light repair track, that carmen were on duty and available to perform the work which was contracted to and performed by a contractor's groundman, and that Rule 120, which was adopted November 1, 1974 supports these claims.

Rule 120, in pertinent part, provides:

"Rule 120 - When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, a sufficient number of Carmen and helpers on duty will be used to perform the work. If a sufficient number of Carmen and helpers are not on duty, a sufficient number of the wrecking crew will be called if available.

NOTE: This does not change the practice of using trains, engines or yard crews to rerail equipment being operated by them at time of derailment, provided this does not require the use of the wrecker outfitter tools other than frogs or blocks." (Underscoring supplied.)

It appears that only the second sentence above, has application to the facts of this dispute.

Article VII - "Wrecking Service" (National Agreement of December 4, 1975) reads:

"1. When pursuant to rules or practices, a carrier utilizes the equipment of a contractor (with or without forces) for the performance of wrecking service, a sufficient number of the Carrier's assigned wrecking crew, if reasonably accessible to the wreck will be called (with or without the carrier's wrecking equipment and its operators) to work with the contractor. The contractor's ground forces will not be used, however, unless all available and reasonably accessible members of the assigned wrecking crew are called. The number of employees assigned to the Carrier's wrecking crew for the purpose of this rule will be the number assigned as of the date of this Agreement.

NOTE: In determining whether the Carrier's assigned wrecking crew is reasonably accessible to the wreck, it will be assumed that the groundmen of the wrecking crew are called at

"approximately the same time that the contractor is instructed to proceed to the work."

The Employes conceded that Carrier had the right to engage a contractor to reraill Unit 1632; but that Carmen, as per Rule 120, should have performed the ground work. However, the record is silent as to the work role played by the contractor's three groundmen in rerailling Unit 1632. There were two on duty Carmen who were utilized. Had they not been used the complexion of the case would have been changed.

Was two a sufficient number of carmen to use? We can't discern from this record. Carrier, obliquely, contends, in effect, as to the use of the three groundmen, that the contractor's equipment was unusual and foreign to Carrier's carmen. We find such assertion to be unsupported and more reflective of literary license than apparent fact. We are here discussing the use of journeymen carmen, who otherwise are and have been used in Carrier's wrecking service.

Rule 120, as pertinent here, has been modified since this Division rendered Award No. 222 and Award No. 4393 on this property. Carrier is now committed to using on duty carmen in sufficient number to perform the work on derailments within yard limits. The Board cannot determine on this record whether a sufficient number of carmen were used. The mere presence of the contractor's groundmen does not stand as a basis for alleging violation of Rule 120. The burden to prove the case here rested with the Petitioner. They failed.

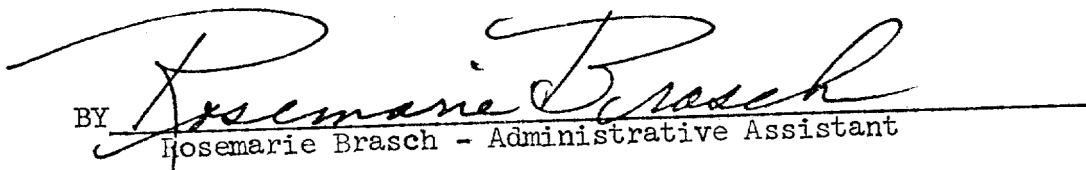
Absent proof that more Carmen were needed the Board concludes that the number was sufficient and thus Carrier was not required to consider use of the Claimants herein. This claim will be denied.

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 25th day of July, 1979.