

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 117, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Western Pacific Railroad Company

Dispute: Claim of Employees:

That a Rio Grande Railroad Co. derrick and groundcrew were used in place of the Western Pacific Railroad Co. Elko derrick and groundcrew.

That these regularly assigned groundcrew members of the Elko derrick be paid in the amount of eleven hours each at rate of time and one-half. They are Carmen D. E. Petersen, J. M. Coggins, and L. O. Headley.

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 employees 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.

On April 11, 1976, one of Carrier's locomotives was derailed at Marblehead, Utah, blocking the main line. Carrier called out its wrecking crew from Elko, Nevada with its derrick to rerail the engine. The Elko derrick and crew were unable to rerail the engine because the derailed wheels were on the east end of the unit and the Elko Derrick had no way to get around the derailed unit to its east end where it could reach the derailed wheels. Consequently, Carrier requested the D&RGW RR to send its derrick from Salt Lake City to rerail the Engine. The D&RGW Derrick and crew was called at 5:00 A.M. on April 11th and the work was completed at 4:00 P.M. that afternoon. The Elko Derrick and crew had been released and did not participate in the rerailing.

The Organization relies on the December 4, 1975 Agreement and in particular Article VII, which provides:

"Article VII - Wrecking:

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 purpose of this rule will be the number assigned as of the date of this agreement.

NOTE: In determining whether carrier's ground 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 as the contractor is instructed to proceed to the work."

Carrier contends that the first phrase of Article VII must be construed to qualify the applicability of the language; in this case Rule 115 of the Agreement must be also considered. That language provides:

"(b) When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany outfit. For wrecks or derailments within the yard limits, sufficient carmen will be called to perform the work."

Carrier's principle argument was that the provisions of the National Agreement were not applicable to using equipment of another railroad, but applied only to outside contractors - outside of the industry. In this case, Carrier argues, the work in question was not performed by outside contractors but by Carmen covered by the same National Agreement, even though employed by a different Carrier. Further, Carrier urges, it had no right to require or assign its employees to the use of D&RGW equipment. On the other hand, Petitioner cites several awards of SBA 570 (Awards 61 and 62). The Organization claims that Carrier should have called its crew, under the National Agreement, with the contractor's (in this instance the D&RGW) outfit.

Unfortunately, the intent of the parties in the drafting of Article VII is not at all clear from the record of this dispute. However, certain previously enunciated principles of this Board are relevant in the disposition of this dispute. First, it is well established that when a derailment occurs outside of yard limits, as herein, (under the provisions of Rules such as 115 supra) and the services of a wrecker are not required, the wrecking crew does not have exclusive right to perform that work (see Awards 7526, 7074 and 7670 among many others). In Award 7744, we dealt with a closely related issue and held that there is no conflict between Article VII and rules such as 115. In that Award, we said:

"The former (referring to Article VII) memorializes the Carrier's right to use outside wrecking services while requiring the use of wrecking crew members as specified but 'pursuant to rules or practices'. Rule 120 is not superceded by Article VII, Section 1. To accept the Organization's position would be to give a new interpretation to Rule 120. Since the parties have not disturbed Rule 120, the Board has no reason to change its interpretation of such rule."

It also must be noted, on a factual basis, that the members of the Elko Wrecking Crew were located 205 miles from the site of the wreck and hence Carrier found that they were not "reasonably accessible".

Based on the reasoning expressed in Award 7744, we find that the provisions of Rule 115 must still be considered in this dispute and that the work in question was not exclusively reserved to Claimants herein. That fact plus the relative inaccessibility of the Elko Crew persuade us that the Claim does not have merit. It must be made clear, however, that we are making no judgment with respect to whether carmen from another Carrier must be considered to be in the same posture as employees of an outside contractor.

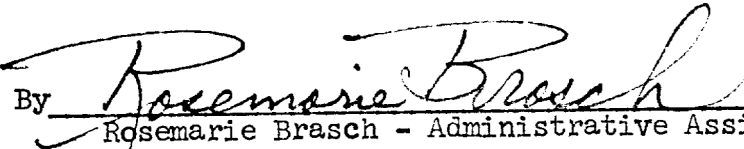
A W A R D

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 14th day of November, 1979.