

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. On January 15, 1978, a derailment occurred at the Adams Siding on the Monon Division of the Louisville & Nashville Railroad, who brought in an Outside Contractor to help clear the derailment, who in doing so, worked four (4) employees of the Contractor in violation of the provisions of Article VII-Wrecking Service of the December 4, 1975 Agreement, with modifications effective April 16, 1976.
2. As a result of this violation, the Employees requested that Carmen J. D. Blackwell, R. L. Walters, W. G. Bruce and J. K. Skomp each be additionally compensated fifteen (15) hours at time and one-half 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.

This dispute involves the assignment of employees by the Carrier in connection with a derailment near Adams, Indiana.

There is no dispute that at 2:30 a.m. on January 15, 1978, the Carrier directed three Carmen from Bloomington to the wreck site, and they worked until 11:50 a.m. January 15. Also, three Carmen from Lafayette at 2:30 a.m. and worked until 1 p.m. January 15.

In addition, a wrecking outfit from Louisville was called at 2:30 a.m. January 15 and remained in service until relieved at 3 p.m. January 17.

Central to the dispute here, however, is that an outside contractor, with rerailling equipment, was called and arrived in two sections at 3 p.m. and 6 p.m., January 15 (according to the Organization) or at 6 p.m. and 8 p.m. (according to the Carrier) and remained on duty until 6 a.m. January 16.

According to the Organization, the outside contractor brought in four groundsmen. This was not denied by the Carrier.

The Organization claims that the Carrier should have called four Carmen from the nearest point (Bloomington) to work with the outside contractor's equipment.

In the initial stages of the dispute the Organization relied on Article VII of the December 4, 1975 National Agreement which reads in pertinent part as follows:

"Article VII - Wrecking Service

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 purposes of this rule will be the number assigned as of the date of this Agreement..."

In the later stages of the dispute, the Organization referred to the Memorandum of Understanding effective April 16, 1976, which is specifically designed to state "how Article VII - WRECKING SERVICE - DECEMBER 4, 1975 AGREEMENT should be administered". The Memorandum of Understanding reads in pertinent part as follows:

"When equipment of a Contractor is used in the performance of wrecking service outside of yard limits, or within yard limits where a wrecker is not stationed, the equipment of the Contractor shall be manned by men called from the Carmen (Shop) Miscellaneous Overtime Board at the nearest point where Carmen are employed. However, if the use of Carmen from the nearest point disrupts the service and/or causes a serious problem at that point, then Carmen may be called from another point to perform the work. (NOTE: The operator of the equipment of the Contractor and his assistant may be employees of the Contractor.)"

The claim as presented to the Board, without protest from the Carrier, refers to both Article VII and the Memorandum.

The Carrier argues correctly that Article VII, by itself, would have no binding effect on this situation, since Section 1 thereof speaks of calling members of "the Carrier's assigned wrecking crew ... to work with the contractor". Since there was "no assigned wrecking crew" at Bloomington, employees at that point would have no contractual requirement on which to rely.

However, the Memorandum of Understanding effective April 16, 1976 between the Carrier and the Organization provides for greater detail for the administration of Article VII. After reviewing manning requirements for wrecking service within yard limits in Paragraph 1, the Memorandum refers in Paragraph 2 to situations in which "equipment of a Contractor is used in the performance of wrecking service outside of yard limits" (as in the dispute here under review). Paragraph 2 states that the "equipment of the Contractor shall be manned by men called from the Carman (Shop) Miscellaneous Overtime Board at the nearest point where Carman are employed".

The record shows that this did not occur, and the Board will sustain the contention of the Organization.

The Carrier makes reference to the simultaneous presence of the Louisville wrecking crew. Since there is no evidence that such crew was not occupied with its own equipment, it could hardly satisfy the requirement of operating the contractor's equipment. Likewise, the Carman originally dispatched from Bloomington and Lafayette had been relieved from duty prior to the arrival of the contractor's equipment, and they also could not satisfy the requirement.

The Board leaves to the parties to determine from available records the precise starting and finishing times of the contractor's equipment, and the Award will be for such hours as so determined. Further, in keeping with practice called for in the predominant number of Second Division Awards, compensation shall be at straight-time pay rather than at the punitive rate.

A W A R D

Claim sustained as specified 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 28th day of October, 1981.