

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Elgin, Joliet & Eastern Railway Company

Dispute: Claim of Employees:

1. That the Elgin, Joliet and Eastern Railway Company violated the current working agreement, specifically Rule 50, when they contracted Vance Corporation, an outside contractor, to reraill tank car A.C.F.X. 88752 on October 31, 1978 and failed to use any of the groundmen from the Joliet, Illinois based wreck crew.
2. That the Elgin, Joliet and Eastern Railway Company be ordered to compensate Carmen wrecking crew members, Paul Lopez, Jim Pampuch and Joseph L. Bick for eight (8) hours pay each at the pro rata rate, one half (1/2) hour at the time and one half rate and three (3) hours pay at the time and one half rate of pay for traveling time.

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 involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants, Carmen Paul Lopez, Jim Papuch and Joseph L. Bick, are members of the East Joliet, Illinois wrecking crew. The Organization contends that Carrier violated Rule 50 of the Agreement when it failed to call Claimants to assist in rerailling work at a derailment at Leithton, Illinois on October 31, 1978. Carrier, instead, contracted the Vance Corporation, an outside contractor.

Rule 50 reads in pertinent part:

"(a) Wrecking crews, including crane engineers, firemen and cooks, shall be composed of regularly assigned Carmen, and will be paid for such service as per general rules from time called until return to their home station. Meals and lodging will be provided by the Company while crews are on duty in wrecking service.

(c) 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.

(d) When the responsibility for a derailment lies with an industry, the rerailling may be performed by the industry -- without penalty. If the industry requests assistance from the Carrier, the controlling Agreement between the Carrier and the Carmen's Organization governs. (Responsibility depends upon type of service, equipment condition, track condition, track location, action or negligence of the industry, etc.)

If the responsibility for a derailment lies with the Carrier, the rerailling will be performed by Carrier's employees in accordance with existing agreements and understandings. (Responsibility will depend upon type of service, equipment condition, track condition, track location, action or negligence of the Carrier, etc.)

For purposes of clarification, Carrier in this dispute is the Elgin, Joliet and Eastern Railway Company. This derailment, consisting of six (6) cars, occurred on October 26, 1978, when the train was being moved onto trackage belonging to the Soo Line Railroad. Carrier's Wreck Truck #157 and crew was dispatched to Leithton. While this crew was en route, Soo Line and Carrier personnel determined that the derailment was Soo Line responsibility as it occurred on its portion of the wye. Soo Line personnel then asked Carrier to reraill cars and bill them for cost incurred. Wreck Truck #157 rerailled five (5) of the six (6) cars on October 26, 1978.

Carrier states that due to the specific equipment required to reraill the remaining car, Soo Line personnel again asked Carrier to arrange for equipment and bill them for cost incurred. Carrier further states that its own 100-ton crane was unavailable and then called the outside contractor who rerailled the remaining car on October 31, 1978.

The Organization claims that Claimants should have been used to perform this work before the ground forces of an outside contractor. It also argues that since the Soo Line requested Carrier's assistance, that Claimants were entitled to this work.

Carrier, on the other hand, insists that Carmen do not have the exclusive right to rerailling work under all conditions. It further contends that it is fully within their prerogative to decide which wrecking crew, if any, is needed and that in this dispute, the rerailling work occurred on outside of yard limits on a foreign carrier's property, and hence, is not subject to the terms of the Agreement.

Carrier's contention that Carmen have no exclusive rights to rerailling work has been sustained in numerous Second Division Awards. Award No. 7074 states in part:

"Turning first to Petitioner's contention of exclusivity, although prior Awards are not in complete agreement, the clear weight of authority supports the principle that under Rule 142 (or similar Rules) Carmen do not have the exclusive right to do the work of rerailling cars unless a wrecking outfit and crew are called or required to do the work. These findings have been made as to wrecks occurring within and outside of yard limits.

See Awards 2343, 3257, 4337, 4901, 4931, 5306, 5621, 5860, 6080, 6454 and 6703."

In this case, it is apparent that Carrier was within its rights in determining that a wrecking crew was not needed. In evaluating the question of Rule 50's application to a derailment on foreign Carrier's property, we have consistently adhered to the principle that it is not work which Claimants had any contractual right to perform. See Second Division Awards 2213, 2992, 4212, 4570, 5857, 5946.

In all, we do not find Carrier's action here subject to the requirements of the Agreement. Therefore, this claim must 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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of October, 1981.