

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States and Canada  
(  
( Burlington Northern Railroad Company

Dispute: Claim of Employes:

- 1) That the Burlington Northern Railroad violated the terms of the controlling Agreement, specifically Rule 83 and 86, when they disengaged the services of the Galesburg, Illinois wrecker and its entire crew on April 27, 1981, who had been clearing a derailment in Beardstown, Illinois, along with the Hulcher Wrecking Company, in which the Carrier allowed the Hulcher Wrecking Service and its employees to remain at the derailment site until April 29, 1981, in order to finish clearing the derailment and load and tie down damaged freight cars for movement to one of the Carrier's back shops for repair.
- 2) That accordingly, the Burlington Northern Railroad Company be ordered to additionally compensate Carman P. L. Johnson, Wrecker Foreman; D. W. Appleby, Wrecker Engineer; K. R. Sells, Wrecker Cook and Carmen S. F. Gross, C. C. Boyd, G. C. Gabbert and R. E. Kunkle, Wrecker Groundman, in the amount of forty eight (48) hours each at the applicable wrecking rate of time and one-half for service claimed on 7:00 A.M., April 27, 1981 through 3:30 A.M., April 29, 1981.

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 employes 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.

At Galesburg, Illinois, the Carrier maintains a facility that consists of a repair track, buildings and yard wherein freight cars and other equipment is maintained and repaired. Carrier also has a 250 ton wrecker manned by a crew of Carmen at that point for the purpose of clearing wrecks and rerailling cars and diesel locomotives.

On date of April 26, 1981 Carrier suffered a derailment at Beardstown, Illinois, apparently (3) three locomotives and a number of cars were derailed. Carrier did accordingly dispatch the Galesburg wrecker together with the crew to the scene for the purpose of clearing the track, rerailling the cars and cleaning up the wreck. Carrier also called the Hulcher Emergency Service, a private concern with an off track wrecker for the same purpose. Both crews apparently worked together rerailling the equipment and cleaning up the wreckage. On the morning of April 27, 1981, the tracks were cleared and the Carrier's wrecker together with the crew was sent back to Galesburg, Illinois, with the Hulcher wrecker and crew remaining on the job to finish clearing up the wreckage loading it on to flat cars and tying it down for shipment to a Carrier repair facility.

The Employes contend that when the Carrier allowed the Hulcher Wrecking Service and its employes to remain at Beardstown, Illinois and complete the wrecking service after "disengaging the services of a Carrier wrecking crew" and sending it back to Galesburg, Illinois that they were in violation of Rules 83 and 86.

It is also the Employes' contention that the Claimants "had an inherent right that is provided by the contractual agreement, to continue in wrecking service, in lieu of the Hulcher Wrecking Service Company and are entitled to be compensated under applicable rules."

The Carrier alleges that the issues in this case are:

1. Whether any rule in the agreement requires that wrecking service outside the yard limits must be performed exclusively by Carrier's wrecking crew.
2. Whether the claim for (48) forty-eight hours pay at the time and one-half is excessive.

Both sides cite numerous awards in defense of their positions.

We have carefully considered all of the facts of the case and note the following:

The Carrier has based their defense almost exclusively on their contention that the Employes do not have exclusive rights to perform wrecking service outside the yard limits, and the awards they cite support that position. However, their argument is flawed by the fact that in their claim the Employes have not asked for any such exclusive right. They have only made claim for time equal to that worked by the Hulcher Wrecking Company after the Claimants were sent back to Galesburg. Thus the Carrier is arguing against something that at least in this case, the Employes have not claimed.

The Employes have contended that the Claimants "had an inherent right that is provided by the contractual agreement to continue in wrecking service in lieu of the Hulcher Wrecking Company Service." Thus the Employes are also arguing for something they have not asked for in their claim.

In the instant case the Carrier called both their own wrecking crew and the Hulcher Company Wrecking crew to clear this derailment, but when the tracks were clear the Carrier's wrecking crew was sent back to Galesburg and the Hulcher Wrecker crew retained to finish the job. The Employes contend that the Claimants should also have remained to complete the clean up, which would have undoubtedly shortened the time needed to complete the job, but to what extent is difficult to say.


In view of the fact that in their claim the Employes have not asked exclusive jurisdiction over wrecking service we feel that to deny the claim as it has been presented in this specific case would, in effect, be to say that the Employes have no right whatsoever to wrecking service, that they could be called only at the whim or fancy of local management and that the rule covering wrecking service had been negotiated in futility. This we cannot do. Accordingly we shall sustain the case but only for the amount of hours actually worked, which is (45) forty-five and not (48) forty-eight and only at straight time rate not at the overtime rate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1984.