

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States and Canada  
(  
( Burlington Northern, Inc.

Dispute: Claim of Employees;

1. That the Burlington Northern, Inc. violated Rule 7, 26, 83 and 86 of our Current Agreement when they used Hulcher Wrecking Service employees to rebuild trucks, reraill cars and load cars on flat cars at Absaraka, North Dakota.
2. That accordingly, the Burlington Northern, Inc. be ordered to compensate Minot, North Dakota wrecking crew D. Lund, J. Rasmuson, R. Bjornson, K. Keyes, R. Meyers and R. Severson in the amount of thirty-four (34) hours at the time and one-half (1.5) rate for September 27 and 28, 1980.

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 employees 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.

A main line derailment occurred at Absaraka, North Dakota on September 25, 1980. Wrecking crews from Minot and Dilworth were called to clear the wreck. Claimants were members of the Minot crew. Carrier also called Hulcher Emergency Wrecking Service to assist the clearing of the wreck. Hulcher equipment consisted of off-track sidebooms and a front and end loader. Minot equipment consisted of a 250 ton on-rail derrick. Dilworth equipment was also an on-rail derrick. When the main line was cleared the Minot crew was released and the Dilworth crew and Hulcher personnel performed what remaining work was necessary.

The Minot crew was released at approximately 8:00 P.M. on September 26, 1980. They arrived in Minot at approximately 5:00 A.M. on September 27, 1980. Hulcher was released at approximately 3:00 P.M. on September 28, 1980.

Employees contend that the Carrier violated Rule 83 when it released the Minot crew and retained Hulcher personnel. The pertinent language in Rule 83 reads as follows:

"Carmen's work shall consist of building, maintaining, dismantling (for repairs), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work in shops and yards except work generally recognized as Bridge and Building Department work; carmen's work in building and repairing motor cars, lever cars, hand cars, and station trucks; building, repairing and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating power saws, operating punches and shears; doing shaping and forming; work done with portable forges and heating torches; straightening sheets; pressed steel, cast steel truck frames and structural steel parts of cars, either cold or requiring heating in connection with carmen's work; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats); all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in shops and engine houses; writing up repairs; oxyacetylene, thermit and electric welding on work generally recognized as carmen's work as provided for in Rule 36; and all other work generally recognized as carmen's work."

This work meticulously describes in considerable detail work that belongs exclusively to carmen. Nowhere in Rule 83 does it say that wrecking service is work that belongs exclusively to carmen. This has been the consistent interpretation of a number of awards on this property.

In Second Division Award No. 6322, on this property, the Board said:

"The same question has been before this Board many times. Awards have consistently held that it is the prerogative of management to decide whether to call wrecking derricks and crews and wrecking crews do not have the exclusive right to all rerailing work."

This principle was clearly enunciated in Second Division Award No. 6177 which said:

"This Board is dismayed that it is compelled to consider a dispute over issues which have been adjudicated innumerable times over two decades. The Board, though sorely tempted, will not, in the interests of brevity, cite the portions of the awards listed below, all of which in clear, unambiguous and definitive manner, repeatedly establish in decisive and controlling language, among other matters, the following:

1. That derailment work outside a yard is not exclusively work of Carmen.
2. That a wrecking crew need not be assigned to a derailment when no wrecking outfit is used."

Thirteen other awards are then cited.

There is another question here of some importance. The Minot crew was called to assist in clearing the main line. It had a 250 ton on-rail derrick. When this crew was released the main line was cleared, it was not feasible to use two on-rail derricks to rerail the cars. Since Hulcher's equipment was off-track, all of the cars could be rerailed and pulled into the clear at once. If the Minot and Dilworth on-track derricks had been used each rerailed car would end up between the derricks, requiring that each car be pulled in the clear before another car is rerailed. This was a fair and impartial operational judgment motivated only by the necessity to have the work completed in the shortest period of time. The decision was not arbitrary, capricious, or unreasonable. A comparable situation, on this property, was before Second Division Award No. 8699 which held that "in light of the legitimate business reasons that existed for the move, we must find for the Carrier".

Employees cite only one precedent on this property. The facts in Second Division Award No. 7124 can be readily distinguished from those before this Board. There the Havre wrecking derrick and crew and two contractors supplied tractors when called to the scene of a derailment. When the main track was cleared the carrier released the contractor's equipment and the Havre derrick and crew. Rebuilding of trucks and wheels and the remaining rerailing work was performed by Maintenance of Way crews. That Board found that "the work of rebuilding of trucks and wheels of freight cars is properly carmen's work. Such work is within the clear and unambiguous language of Rule 83 ... We find that Carmen were entitled to all the work involved in the rebuilding of the trucks of the freight cars at the derailment scene" (Emphasis retained.)

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Award No. 10103  
Docket No. 9685  
2-BN-CM-'84

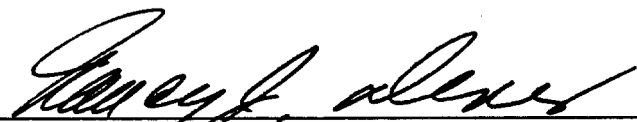
There is no allegation and no probative evidence that freight car trucks and wheels were repaired at the Absaraka, North Dakota derailment scene or that if they were repaired that the work was performed by other than Carmen.

All other awards cited by Employees are on other properties which, even if they enunciate principles supporting Employees' position, are not applicable because the schedule agreement rules between the instant parties were not involved.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:   
Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois this 26th day of September 1984.