Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10428
SECOND DIVISION Docket No. 10290
2-MP-CM-'85

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

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

Disute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated Article VII of Agreement of December 5, 1975 when they used outside contractors goundmen at derailment site at McCroy, Arkansas December 22, 1981.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen H. E. Ison, H. Phillips, M. T. Linz and B. G. Pruitt in the amount of five (5) hours each at the punitive rate of pay.

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.

On December 22, 1981, three of the Carrier's freight cars derailed at McCroy, Arkansas. This is approximately sixty miles northeast of Little Rock, the Claimants' headquarters. The Carrier engaged the services of Hulcher Emergency Services, headquartered at Pine Bluff, which is forty miles from Little Rock and in the opposite direction from McCroy. The Organization asserts that Article VII of the December 5, 1975, Agreement was violated because Hulcher performed groundwork at McCroy and, in addition, they were suplemented by two carmen from Carrier's Newport facility.

The Carrier contends that Hulcher performed no groundwork, and the Organization's assertion is not supported by evidence of record. Secondly, Carrier argues that Article VII does not require it to transfer to a more distant wrecking crew such carmen's work as is necessary at derailments when such work, in the absence of a call for the wrecker, has traditionally been performed by those carmen headquartered closest to the site of the derailment.

Article VII reads in pertinent part:

> "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 employes assigned to the carrier's wrecking crew for purposes of this rule will be the number assigned as of the date of this Agreement."

Carrier also cites the following portion of Rule 105 as the language which, by Agreement, gives it the right to use the carmen from Newport rather than carmen from Little Rock:

> "When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit."

Having reviewed the Carrier's arguments concerning past practice and Rule 105 and submitted citations, the Board, at the outset, is constrained to declare that we find no ambiguity in Article VII of the December 5, 1975, Agreement. It contains three sentences plus a note dealing with the term "reasonably accessible." The first sentence involves the utilization of an outside contractor for wrecking service. If the Carrier chooses to use such a service, with or without its forces, then a sufficient number of the assigned wrecking crew will be called to work with the contractor if they are reasonably accessible to the wreck. The second sentence is a prohibition against use of the contractor's ground forces unless members of the assigned wrecking crew are called. Again, they must be reasonably accessible. The third sentence identifies the size or staffing of the wrecking crew as of the effective date of the 1975 Agreement. With respect to Rule 105, contrary to the interpretation Carrier wishes us to adopt, that rule, as particularly cited, does not, when coupled to the first sentence of Article VII, modify the Agreement so as to allow past practice to govern the subject of utilization of wrecking crew ground men. The use of the term "pursuant to rules or practices" refers to the use of an outside contractor which is further amplified by Rule 105 which does not mandate the use of Carrier's wrecker and crew for all derailments. The use of the phrase "pursuant to rules or practices" does not modify the clear and unambiguous language of Article VII dealing exclusively with the subject of Carrier's assigned wrecking crew. See Second Division Awards Nos. 8284, 8161, and 8064.

The two carmen assigned to perform ground work with Hulcher are not assigned to a wrecking crew. With respect to the collateral issue of "reasonably accessible," we find the crew of the wrecker headquartered in Little Rock was accessible and available. Returning to the Organization's assertion that Hulcher ground forces were used at the derailment, this Board notes that the Carrier, in responding to the Organization on June 14, 1982, stated that "... Hulcher's laborers did not perform any carmen's work." This is an implicit admission there were Hulcher ground forces at the scene, and the asserted denial they performed "carmen's work" is not supported by any material facts. The record shows that Hulcher arrived at approximately 10:00 A.M., and the last car was rerailed at about 1:00 P.M. Therefore, in accordance with the above findings, this Board will sustain the claim for three hours (10:00 A.M. to 1:00 P.M.) at the straight time 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 5th day of June, 1985