

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  
( Kansas City Southern Railway Company  
( Louisiana & Arkansas Railway Company

Dispute: Claim of Employees:

1. That the Kansas City Southern Railway Company-Louisiana and Arkansas Railway Company violated the agreement between the Kansas City Southern Railway Company-Louisiana and Arkansas Railway Company and the Brotherhood Railway Carmen of the United States and Canada, effective April 1, 1980 and the Railway Labor Act, when it failed to pay Carmen R. G. Stouder and Carman Charles Ramsey each eight (8) hours pay at the pro rata rate for the date of April 4, 1981, account outside contractor loading and securing car B&O 603643 (hopper) on flat car MTTX 650935 in Reserve Yard.

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.

A derailed freight car was loaded and secured onto a flat car by an outside contractor at the Carrier's Reserve Yard, Reserve, Louisiana. The Claimants are employed at New Orleans, approximately 20 to 30 miles from Reserve Yard. There are no Carmen assigned at Reserve Yard.

The Organization argues that Rule 75 was violated when the outside contractor was employed and did not use Carmen in the ground crew. The Organization claims that the Claimants, available for such work, should have been called.

Rule 75 arose from National Mediation Agreement dated December 5, 1975, which included Article VII - Wrecking Service. The Rule reads as follows:

**"RULE 75**

**Wrecking Crews**

(a) Regularly assigned wrecking crews, including the wrecker engineer will be composed of carmen, and will be paid for such service under Rule 9.

(b) When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.

(c) When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will be used. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work.

(d) Meals and lodging will be provided by the Company while crews are on duty in wrecking service.

(e) 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 September 25, 1964.

NOTE: In determining whether the carrier's assigned wrecking crew is reasonably accessible to the wreck, it will be assumed that the groundmen of the wrecking crew are called at approximately the same time as the contractor is instructed to proceed to work."

In its argument, the Organization emphasizes that the adoption of Rule 75 makes reference to disputes (and resulting awards) prior to 1975 without precedential value. The Organization places special reliance on the following portion of Rule 75:

"(b) When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification."

The Carrier and the Organization referred to numerous awards, both prior and subsequent to 1975, concerning the claimed requirement to use Carmen in connection with services of outside contractors. All of these, however, refer to the use of Carmen who are members of wrecking crews. Some of these cases concern whether or not a wrecking crew in fact existed at the time of the incident, or whether such wrecking crew was "readily accessible".

The difficulty here is that the Organization offers no evidence that the Claimants were members of a wrecking crew, at New Orleans or elsewhere. Rule 75 is subject to a variety of interpretations covering diverse situations, but the underlying common theme is the extent of obligation of the Carrier to employ wrecking crews in particular and not Carmen in general. Even paragraph (b) of the rule refers to use of "men of any class" to be used as "additional members of wrecking crews". No Carrier wrecking crew was employed in the incident here under review. Paragraph (e) details the relationship between outside contractors and use of wrecking crews.

Indeed, the only use of "Carmen" in Rule 75 is in the oft-interpreted second sentence of Paragraph (c), but this refers only to wrecks or derailments within yard limits, which is not the situation here.


Rule 75 does not support the claim of the Claimants, who were not shown to be wrecking crew members. In addition, there is no other basis to show why Carmen based in New Orleans should have been called to assist an outside contractor employed in rerailing at Reserve Yard.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1985.