

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10744
Docket No. 10565
2-SOO-CM-'86

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement, the Soo Line Railroad Company is in violation of Rules 27, 28 and 98 of Shops Craft Agreement, when effective at 6:00 p.m., March 10, 1982 and thereafter to March 12, 1982, when derailment site at Auburndale, WI was cleaned up, the Soo Line Railroad Company allowed the outside contractor's equipment, with eight (8) operators and two ground men, to perform the Carmen's work after the emergency ceased, to clean up the derailment site.

2. That accordingly, the Soo Line Railroad Company be ordered to pay Carmen D. Behnke, G. Molski, E. Walkush, N. Sankey, A. Kielpenski, H. Kolpinski and J. Klicinski, Stevens Point, WI, assigned wrecker crew members, 150 hours at straight time to be divided equally among the claimants for loss of compensation of pay they could have earned when the Soo Line Railroad Company secured the services of the outside contractor's equipment and ten (10) of its employees.

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 had jurisdiction over the dispute involved herein.

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

The record shows that about 4:00 A.M., March 9, 1982., thirty-four freight cars derailed on Carrier's main line at Auburndale, Wisconsin. Carrier's Wrecking Crew located at Stevens Point, Wisconsin, performed ground work at the site of the derailment, while outside contractors forces cleared the site, which included moving twenty-four cars, that had been destroyed and sold to a private contractor for disposal, to a location that was a safe distance from the track. The Carrier states that due to the time likely to be consumed in transferring potash loads from each of the twenty-four 130-ton capacity cars that were destroyed, a 1,400 feet long temporary track, referred to in the record as a "shoo-fly track," was built around the wreck site. Traffic over the "shoo-fly" track was restricted to ten miles per hour. The

"shoo-fly" track was placed in operation at 5:00 P.M., March 10, 1982. The potash loads were not completely transferred until March 13, and the main line was not placed back into operation until 3:10 P.M., March 22, 1982.

The Organization does not dispute the right of the Carrier to use outside equipment and operators as long as an emergency existed, but contends that the emergency ceased to exist when the "shoo-fly" was installed.

The Organization cites Rules 27, 28 and 98 of the Agreement. Those rules are set forth in the record, and we see no necessity for repeating them here, except we point out that rule 98 - 3(a) recognizes that in the case of an emergency the Carrier may use the equipment of a contractor (with or without operators), and a sufficient number of the regularly assigned Wrecking Crew located at the nearest point to the scene of the wreck will be called to work with the contractor as groundmen. The Employees recognize that an emergency existed from March 8, 1982, through 6:00 P.M., March 10, 1982.

The Carrier points out that the Claimants herein, assigned members of the Stevens Point Wrecking Crew, were used at the derailment site on March 10, 11, and 12, 1982, the dates involved in the Claim, and each was compensated for eight hours or more, some up to 17.5 hours, for each day of the Claim. The Carrier also points out that the Wrecking Crew members worked at the site on March 16, 17, 18 and 19, 1982, loading trucks from the derailed cars onto flat cars and securing wrecked cars to flat cars.

The Carrier contended on the property and contends before the Board that the construction of the "shoo-fly" did not return the main line operations to normal, and also that the cleanup work required the moving of cars farther from the track than was possible by the use of Carrier's equipment, and that the use of contractors' equipment for this work was necessary.

The Board agrees that the Carrier had the right under the existing situation at Auborndale during the period involved in the Claim, to determine the need for contractors' equipment. We have been referred to prior Awards of this Board, Nos. 6757, 7979, 8395, 8235, all involving the use of outside contractor forces to assist in derailment situations on this Carrier, and also Award No. 10111 which involved the Carrier's use of employees other than Carmen to rerail a Car within the Roundhouse area.

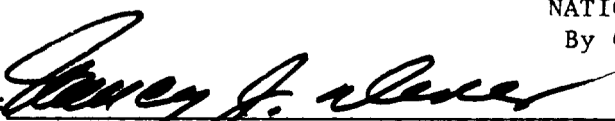
On the basis of the facts in this case, and considering precedent Awards on the same Carrier, the Claim herein will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1986.