

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Burlington Northern Railroad Company

Dispute: Claim of Employees

1. That the Burlington Northern Railroad violated the terms of the current agreement, particularly Rules 27(a), 83 and 86, when they retained Hulcher Wrecking Service employees to augment the Pasco wrecking crew at the Kiona, Washington derailment February 21 through 22, 1981.

2. That accordingly, the Burlington Northern Railroad be ordered to additionally compensate Pasco Carmen L. R. Lyle, D. L. Simmons, R. E. Schutte, J. B. Washburn and D. L. Winter in the amount of twenty-two (22) hours' pay each at the wrecking service rate of time and one-half (1 1/2) as claimed for service on February 21 and February 22, 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 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.

Claimants are employed at Carrier's Pasco, Washington Repair Track on the 7 AM to 3:30 PM shift with Saturday and Sunday rest days. According to the record, none of Claimants are regularly assigned members of the wrecking crew.

On Friday, February 20, 1981, eight (8) freight cars derailed on Carrier's main line approximately four (4) miles west of Kiona, Washington. In response, Carrier not only called its own regular wrecking crew, complete with Derrick, but also M. L. Hulcher, a private wrecking contractor. Both crews worked clearing the main line from 12 Midnight, February 21, 1981 to 10 PM, February 22, 1981; a total of twenty-two (22) hours of service.

Carrier contends that Hulcher was called because ". . . it (Hulcher) had the proper off-rail equipment, which the Carrier did not have, to accomplish the work."

Organization contends that Carrier's actions violated Rule 27(a) - Assignment of Work, Rule 83 - Classification of Work, and Rule 86 - Wrecking Crews of the parties' applicable Collective Bargaining Agreement. By virtue of a joint reading of the aforestated contractual provisions, Organization proposes that once a wrecking crew is called, said wrecking work belongs exclusively to the Carmen's craft. Organization supports its contention by citing various Second Division Awards, particularly Award No. 7124, which predate Article VII of the 1975 National Wrecking Rule. Organization specifically quotes that portion of Referee Twomey's Award which states:

"We find that the work of rebuilding of trucks and wheels of freight cars is properly Carmen's work. Such work is within the clear language of Rule 83"

In counterpoint, Organization disputes the applicability of various other Second Division Awards, which were cited by Carrier in its argumentation, which allegedly hold that wrecking work does not exclusively belong to the Carmen's craft. According to Organization, said Awards do not apply in the instant case because they apply to parties who are bound by the 1975 National Wrecking Rule and not to the Burlington Northern Carmen who chose to be governed by their existing Wrecking Rule. In summary of its position, Organization believes that because wrecking work belongs exclusively to the Carmen's craft, then Carrier, in the instant case, was contractually obliged to call Claimants from the Overtime Board to perform the work which was performed by Hulcher's groundsmen.

Succinctly stated, Carrier urges dismissal of the instant Claim by contending that wrecking work does not belong exclusively to members of the Carmen's Craft. In addition to citing numerous Second Division Awards as supportive of its position, Carrier also argues that a plain reading of Rule 86 is appropriate in this case. According to Carrier, Rule 86(b) draws a distinction between inside of yard limits wrecks and outside of yard limits wrecks; and also that Rule 86(d) only requires Carrier to call additional employees to work outside of yard limits at wrecks when needed. Carrier in its argumentation emphasizes that the disputed wreck occurred outside of the Pasco Yard; Carrier's equipment was inadequate to handle the derailment; and with the presence of the Hulcher crew at the derailment, additional Carmen were not needed.

The Board has carefully read, studied and considered the complete record in this dispute, and is convinced that Carrier's position as presented herein is correct and, therefore, must prevail.

The specific rational for this determination is that Rule 86(b) of the Controlling Agreement only requires that regularly assigned crews accompany the wrecking outfit when it is called to derailments outside of yard limits. Carrier did this in the instant case. Moreover, the Board also finds Second Division Award 7124 to be inapplicable in the instant case because in that case Referee Twomey was confronted by a situation wherein the Carrier's wrecking crew was sent home while a contractor's ground crew continued to clear the site. In the instant case, however, Claimant's were never called and are not members of the regularly assigned wrecking crew.

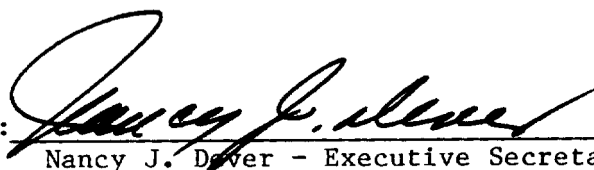
For the reasons posited above, the Board concludes that Carrier did not abuse its managerial discretion by calling Hulcher to assist in clearing the derailment which occurred near Kiona, Washington on February 20, 1981. Carrier did send its regularly assigned crew with its own equipment, to the scene and the Controlling Agreement does not require more. Carrier was not contractually required to call Claimants from the Overtime Board to assist in the performance of the disputed wrecking work as Organization presently contends.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 10th day of September 1986.