

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein 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, 94 and 98 of the Shops Craft Agreement, as amended, when on February 22, 1984, the Soo Line Railroad Company secured the services of an outside contractor's equipment and operator from Eau Clair, Wisconsin to assist four assigned Shoreham wrecking crew members to load derailed cars from a previous derailment at Chippewa Falls, Wisconsin outside yard limits.

2. That accordingly, the Soo Line Railroad Company be ordered to pay Carman W. Fish, Shoreham Shops assigned Wrecker Engineer, eight (8) hours at straight time and six and one-quarter (6 1/4) hours at time and one-half carmen's rate of pay for loss of compensated pay when he was denied his contractual right to work his bulletined position as the assigned Shoreham Shop Wrecker Engineer.

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.

Claimant is the assigned Wrecker Engineer. He operates the Carrier's wrecker at the Shoreham Shop.

On February 22, 1984, Carrier used an outside contractor's equipment and operator to assist the assigned wrecking crew to pick up and load derailed wrecked freight cars onto flat cars, which were left from a previous derailment at Chippewa Falls, Wisconsin. Trackage right of way was open to traffic and no emergency existed.

The Organization asserts that Carrier violated Rules 27, 28, 94 and 98 of the controlling Agreement. To the Organization, wrecking work was performed and Claimant should have been assigned to perform the work. We do not agree. The central issue in this case is whether or not the Carrier has the right to determine the equipment necessary in emergency or non-emergency situations. Based on a careful review of the record evidence in its entirety, we must conclude that Management had the right in the instant case to determine whether to use an outside contractor. Rule 98, relied upon by the Organization in support of its Claim, provides for the use of the Carrier's own wrecking crews and equipment if the Carrier elects to do so; if Carrier chooses not to, it can utilize the equipment of an outside contractor. Rule 98 stipulates the terms and conditions governing the assignment and use of Carriers wrecking crews and/or Carmen; it does not grant the exclusive right to perform the wrecking service. The Agreement does provide in Rule 94 that Carmen have the exclusive right to operate Carrier's wrecking equipment, if Carrier designates this equipment to be used, but the Carrier retains the right to exercise its discretion and judgment to determine the need for contractor's equipment in the first instance. This principle has been recognized in numerous Awards. See, e.g., Second Division Award Nos. 8395; 8235; 6757; 10744; 10974. As stated in Second Division Award 6757:

" . . . This Board has rendered many Awards dealing with the problems of interpreting rules concerning wrecking service . . . ' In Award 6257 we reviewed at length a number of the Awards in which the criteria to be applied are clearly and definitively delineated. (See Award 6177 (Simons) and Awards cited therein; the lengthy quotation from Award 1757 (Carter); and the most significant statements in Award 4190 (Anred). Although, Award 6257 sustained the claim therein because of the specific facts pertaining therein; it states that we find no warrant to 'disturbing the basic concept underlying the . . . cited Awards . . . ' The key facet applicable to the instant claim '. . . the determination of the need for a wrecking crew . . . involves management discretion and judgment . . . Carrier's decision can successfully be challenged before this Board only on the ground that it was arbitrary, capricious, discriminatory or an abuse of managerial discretion . . . (Award 4190) (emphasis supplied)'"

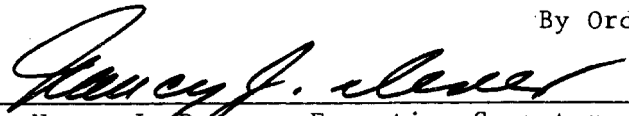
In this case, Carrier determined that the contractor's mobile equipment was essential to the efficient and expeditious cleanup of the derailment. There is no evidence that Carrier failed to use a sufficient number of Carmen or that it abused its discretion in employing the outside contractor in the context it did. Accordingly, we will not interfere with the Carrier's managerial discretion.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.