

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Form 1

Award No. 12783
Docket No. 12648
94-2-93-2-20

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen/Division
 (Transportation Communications
 (International Union
 (
 (The Elgin, Joliet and Eastern Railway
 (Company

STATEMENT OF CLAIM:

- "1. That the Elgin, Joliet and Eastern Railway Company (hereinafter Carrier) violated specifically Rule Nos. 50, 79, 94 and 97 of the controlling agreement when the Carrier did not allow the claimants to assist contractor on October 6, 1991 in rerailling cars AMOX 1311 and GLNZ 86101, when wrecking crew members were available accessible to wreck, willing and qualified to perform that work.
2. That accordingly, the Elgin, Joliet and Eastern Railway Company be ordered to additionally compensate Carmen D. Smythe, R. Koepl and J. Gomez five hours and ten (10) minutes each of the punitive rate of pay, for Carrier's violation of Rule Nos. 50, 79, 94 and 97 of the controlling agreement on October 6, 1991."

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 employee 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 the claim date, tank cars derailed within the Kirk Yard limits and the Carrier used Corman Wrecking Company for the rerailling, which operation consumed slightly over five hours.

The Organization cites the fact that the Rules refer to operating Carrier's wrecking derrick, etc., at wrecks or derailments, as being part of the Carmen's work, and asserts that Claimants should have been paid from the time the outside contractor was called.

In response to a portion of the Carrier's defense, the Organization does not dispute the fact that there is no longer a wrecker/derrick at the location, but the fact that the Carrier eliminated an obsolete piece of equipment for new modern equipment does not forfeit the Organization's contractual rights.

In addition to an assertion that the Organization expanded upon the original claim, the Carrier denies that it is obligated to call members of the three-man mobile crane/wreck truck crew to assist an outside contractor in rerailling within the Kirk Yard limits.

Because the derailment occurred at a switch and caused substantial damage to the rail and surrounding tracks, the Carrier advised that it was impossible to utilize any of its equipment to reraill the two cars and place them on good trackage.

Despite a number of other assertions, the Carrier relied on various Awards which have held that, if no derrick is required, there is a limitation on a need to call employees, i.e., the actual wrecking crew must be called only when the outfit or wrecker is called and the need for calling the wrecker is a matter to be determined by the Carrier. Moreover, the Awards indicate that Carmen do not have the exclusive right to derailment work outside yard limits, etc. In short, based upon a review of the various cited Awards, the Board finds no basis for a sustaining Award in this case.

A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois this 17 day of November, 1994.