

**Award No. 6286**

**Docket No. 6129**

**2-SLSW-CM-'72**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That Carrier willfully violated the rules of the Current Controlling Agreement on November 24, 25, 26, 28, 29, 30, and December 1, 2, 3, 1969, when an outside contractor with derrick assisted the Texarkana Wrecker Crew in clearing derailment at Mile Post 553, thereby damaging members of the Pine Bluff Wrecker Crew.

2. That the Carrier therefore be ordered to make whole the following members of the Pine Bluff Wrecker Crew in the amount of hours appearing after their name for said violation:

J. W. Carter, Engineer, 164.8 hours  
H. J. Davis, Assistant Engineer, 164.8 hours  
V. L. Ferguson, Groundman, 164.8 hours  
M. R. Lovelace, Groundman, 164.8 hours  
T. E. Ashcraft, Groundman, 164.8 hours  
R. E. Lee, Groundman, 164.8 hours  
J. H. Findley, Groundman, 164.8 hours  
H. E. Gatlin, Groundman, 180 hours  
P. C. Holtzclaw, Cook, 164.8 hours  
L. Petty, Assistant Cook, 180 hours

**EMPLOYEES' STATEMENT OF FACTS:** Sometime after midnight on November 19, 1969 a derailment involving thirty-six (36) freight cars occurred at Mile Post 553 south of Tyler, Texas, and the Texarkana Wrecker Crew was called at 2:00 A. M., November 19, 1969. They left Texarkana at 3:40 A. M. that date, and arrived at the north end of the derailment at 5:30 A. M., where they worked straight through until 8:30 P. M. on November 20. This Crew was called at 5:30 A. M., November 21, 1969, and worked the north end of derailment until 10:00 P. M., at which time the Main Line was clear and train service had been restored. 1. A Wrecking outfit and crew of the Southern Pacific Railway Company, which had been working the south end of the derailment was released. The Texarkana Crew returned to home point

Although the Employees allege the Pine Bluff relief outfit was available during the period November 24 - December 3, 1969, it was pointed out in conference on the property that the Pine Bluff relief crane and crew were used at a derailment at Stamps, Arkansas on November 30 and December 1, 1969, and obviously were not available to have been used at Mile Post 553 on those two dates. Therefore, any claim for the carmen in the instant case on those two dates could not be valid.

It was also pointed out that Carman T. E. Ashcraft was on vacation December 1 - 3, 1969, and Carman H. E. Gatlin was on vacation December 2 - 3, 1969, and they were not available for service on such days.

Carrier also submits that there could be no valid claim for P. C. Holtzclaw, Cook, and L. Petty, Assistant Cook, as Rule 90 specifically excepts cooks.

In conclusion Carrier submits that there was no violation of the agreement and respectfully requests that the claim be denied.

**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 employe 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 November 19, 1969, at approximately 1:15 A.M., a derailment occurred on Carrier's line blocking the main track. The latter was cleared and ready for passage of trains at 4:00 A.M., November 20, 1969. Additional work was required in and around the scene of the derailment requiring the use of the two relief cranes and bulldozers until the evening of November 21, 1969. From November 24 to December 3, 1969, bulldozers were used to clear the area, etc.

The work was performed by Carrier's Texarkana relief crane equipment and crew assisted by two bulldozers and one side-boom bulldozer furnished by an outside contractor.

The instant claim has been submitted by the Pine Bluff Wrecking crew on the grounds that they should have been afforded the opportunity to perform the work in preference to the outside contractor. They rely principally Rules 34-1, 87 and 90, all of which in pertinent parts read as follows:

**Rule 34-1**

"None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft," \* \* \*

**Rule 87**

"\* \* \* Wrecking derrick engineers \* \* \*" and all other work generally recognized as Carmen's work on this Carrier, \* \* \*"

## Rule 90

"Wrecking crews (except Cook) including engineers shall be composed of regularly assigned carmen, when available, and will be paid for such service as per general rules from time called until return to their home station. \* \* \* When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany outfit. \* \* \*" (Emphasis ours.)

The Classification of Work Rule (87), specifies "and all other work generally recognized as Car-Men's work." Although this rule does not include "wrecking service" as such, the Organization arguendo avers that such work is generally recognized as their work. Further, Rule 34-1 provides that one must be "regularly employed" by Carrier to perform the work, and since the employes of the outside contractor are not so "regularly employed," Carrier has ignored their basic rights to work.

We take cognizance of the arguments propounded by the Organization but do not find them to be persuasive. There is no showing in this record that claimants had an exclusive right to the work. There is no evidence, burden of which is on the Petitioner, to prove that by engaging the services of an outside contractor, Carrier ipso facto has violated the agreement. The use of the word "when" is highly indicative of the non-exclusive nature of the work performed. We find no contractual prohibition against the employment of an outside contractor. We will deny the claim.

## AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1972.