

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 99, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That the current agreement was violated when the Carrier used Hulcher Emergency Railroad Service, an outside contractor to help clean up a derailemnt at Madisonville, Kentucky, on February 8 and 9, 1972.
2. That accordingly the Illinois Central Gulf Railroad be ordered to additionally compensate P. T. Keeling, F. J. Kaufman and R. E. Seay, Carmen, extra men for wrecking crew, five (5) hours overtime each for February 8 and 9, 1972. Also, be ordered to additionally compensate L. V. Beckham, Carman, extra man for wrecking crew, five (5) hours overtime pay for February 8, 1972, and thirteen (13) hours overtime pay for February 9, 1972.

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.

A derailment occurred at Madisonville, Kentucky, February 8, 1972. The Paducah Wrecker X-100 was listed for 12:40 A.M. on Tuesday February 8, 1972 and the regular wrecking crew accompanied the wrecking outfit to the wreck. Carrier also called the Hulcher Emergency Railroad Service, a private contractor, to assist the wrecking crew in the reraill work. The 11 man Hulcher crew arrived at approximately 6:00 P.M. on February 8, assisted the wrecking crew, and were relieved at 7:00 P.M. They returned at 7:00 A.M. the next day and completed

the rerailling work along with the wrecking crew. The Organization contends that the applicable Agreement was violated when Carrier augmented the wrecking crew with the Hulcher employees. Claimants are carmen who were off duty and available for service on the claim dates.

In their submission, Carrier avered that this Board lacks jurisdiction over this dispute since the National Shop Craft Agreement of September 25, 1964 gave exclusive jurisdiction over subcontracting disputes to a Special Board of Adjustment. However, this Board has assumed jurisdiction over subcontracting disputes involving wrecking crew activity, such as the claim before us, thus effectively laying the issue to rest. See, for example, Award 6582.

Relative to the merits of the within claim, Carrier maintains that nothing in the Agreement reserves to carmen exclusive right to the rerailling work in question so it acted within its managerial rights in assigning some of the work to outside forces. However, it has been held on this property that carmen do not have exclusive right to wreck or derailment work but when a wrecker is required then all wrecking or derailment work accrues to carmen. See Award No. 1757. Furthermore, this Division has consistently held that, in general, wrecking work belongs to carmen. See, for example, Awards 1298, 1559, 6030, among others. Thus, as in the instant claims, when Carrier utilizes a wrecker the wrecking work attendant thereto belongs to employees of the carmen's craft.

Defending its use of the Hulcher crew, Carrier insists that its main line was blocked thereby constituting an emergency, and that Carrier's employees could not reraill all the cars without Hulcher's equipment. We believe it is well established that Carrier is justified in using outside forces to perform wrecking crew functions where an emergency exists. See Awards 6582, 6490, 1559. However, when the issue of emergency is raised it is incumbent upon the Carrier to come forward with sufficient evidence establishing that an emergency did, in fact, exist. We conclude from a thorough reading of the record before us that they have failed to do so. While the Paducah wrecking crew were listed for 12:40 A.M. on February 8, the Hulcher crew did not arrive at the wreck until approximately 6 P.M. that evening. And they were relieved an hour later, not returning until 7 A.M. the next day. Such a delay raises doubts whether a compelling emergency actually existed. Nor do we feel Carrier has established that its equipment was not capable of rerailling the wreck. While it maintains that Wrecker X-100 could not complete the job, it does not refute the fact that the crew rerailled four cars prior to arrival of the Hulcher crew. When the Organization claimed that the Cline truck had the capacity to lift the load of poles at the wreck site, it was incumbent upon Carrier to show that such was not the case and that its equipment

was unsuited to complete the rerailling work. Carrier has not come forward with compelling evidence to establish that fact, and since the burden was upon it to prove that an emergency existed, we conclude they have failed to sustain their burden. We are compelled to the conclusion that the Agreement has been violated and we feel the claim should be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this