

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 66, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That under the provisions of the current controlling agreement, the Carrier on January 4, 5, 6, 7, and 8, 1972, violated said agreement, by augmenting the Minneapolis, Minnesota wrecker and wrecking crew with a 65 ton crane, two (2) bulldozers, and manpower from the Robert R. Schroeder, heavy construction Firm of Glenwood, Minnesota, at the derailment of twenty-four (24) cars and two (2) diesel units at Greenwald, Minnesota, which occurred on December 29, 1971.
2. That accordingly, the following eight (8) regularly assigned members of the Superior, Wisconsin wrecking crew who were ready and available, to be compensated fourteen (14) hours travel time to and from derailment plus thirty-two and one-third (32 1/3) hours in rerailling for a total of forty-six and one-third (46 1/3) hours time and one-half pay each:

R. Michalski
R. Pearson
D. Noble
H. Lindemann

T. Maloski
J. Breeze
W. Groskrutz
J. Mockler

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.

This claim stems from a dispute concerning the application and interpretation of the following rules of the controlling agreement between the Parties; which we quote in part:

"Rule 28. 1. "None but mechanics ... shall do mechanics' work..."

Rule 97. "Regularly assigned wrecking crews... will be composed of Carmen ..."

Rule 97. "When wrecking crews are called for wrecks and derailments outside of yard limits, a sufficient number of regularly assigned crew will accompany the outfit ..."

Rule 94. "Carmen's work shall consist of ... all other work generally recognized as Carmen's work."

Based upon those Rules, Petitioner contends that Carrier's regularly assigned wrecking crew, stationed at Superior, Wisconsin, with their wrecker, should have been ordered by Carrier to assist the Shoreham, (Minneapolis) Minnesota crew to clear the wreck and rerail moveable equipment, instead of its employing an outside contractor to supply a sixty five ton crane and two bulldozers with manpower to operate same, to effectuate the work, which involved the derailment of two diesel engines and twenty-four cars at Greenwald, Minnesota. As indicated, the claim is for payment to the regularly assigned Superior, Wisconsin wrecking crew for time it would have worked had they been called for this wreck and derailment.

As stated in our recent Award 6602, "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 is "... the determination of a 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 its denial letter of April 17, 1972 (Petitioner and Carrier Exhibit "H"), Carrier sets forth

"the determination to use the mobile crane was made when the Shoreham wrecker arrived to clear the wreck site. One locomotive was 50 feet from the track requiring the use of mobile equipment. An additional wrecker would not have been of any assistance in this circumstance."

This was not controverted by Petitioner, nor did it produce any evidence whatsoever that Carrier possessed equipment of the type properly determined by Carrier to be necessary for this wreck cleanup and rerailment. Its only argument relative to this is that there allegedly exists a past practice that when outside contractor's equipment and manpower were employed, two of Carrier's wrecking crews were actively engaged on the work. This assertion was duly dealt with and disposed of in Award 6602, which involved a similar dispute between the same Parties as those before us in this case, and the holding therein is fully applicable hereto. Carrier's conduct was therefore not violative of the controlling agreement.

Petitioner urges sustaining of this claim on the ground that the denial of the claim initially presented to Carrier's L. & C. Foreman at Superior, Wisconsin did not satisfy the requirements of Article V of the August 21, 1954 Agreement in that the Foreman did not notify the local Chairman, "in writing of the reasons for ..." disallowing the claim. The Foreman stated that he was unaware of the incidents referred to in the claim, they having occurred "on another Division." Nothing in this record reveals that this was not an accurate statement on the part of this Carrier officer and his reply was therefore appropriate and was in compliance with the obligations imposed by Article V of the August 21, 1954 Agreement.

A W A R D

Claim Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 31st day of July, 1974.

