

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 Carrier improperly used employees of a private company and their equipment to assist the wrecking in clearing up a wreck of three (3) locomotives on October 9, 1971 and also clearing up a wreck of ten (10) freight cars on October 10, 1971 instead of calling additional amount of carmen.
2. That accordingly, the Carrier be ordered to additionally compensate carmen:

W. E. Presson
W. Q. Boyd
A. M. Smith
E. L. Wyatt
H. G. Mount

J. H. Sipes
G. F. Potts
D. R. Lee
F. B. Gowan
W. L. Stewart

in the amount of five (5) hours and thirty (30) minutes at overtime rate for October 9, 1971, ten (10) hours at overtime rate for October 10, 1971 and two (2) hours travel time each direction at overtime rate for the above carmen who could have been at the scene at the same time the rest of the Jackson, Tennessee crew arrived; which was about two (2) hours before the private company arrived.

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 October 9, 1971 there was a derailment at Dyer, Tenn. consisting of 3 locomotives and 10 freight cars. The Jackson wrecking crew was dispatched to the derailment site arriving at 5:05 P.M. At approximately 7:00 P.M. the Hulcher Emergency Railroad Service, a private contractor, arrived with 3 bulldozers, 3 operators, 2 foremen and 10 groundmen to assist in the wrecking service. It is the Organization's position that Carrier failed to call sufficient carmen to perform work at the derailment, particularly since 10 groundmen from Hulcher Emergency Service were used. They contend that Carrier should have called 10 regularly assigned carmen to assist the wrecking crew rather than using 10 groundmen who are strangers to their collective bargaining Agreement.

It should be noted at the outset that all members of the wrecking crew were called for the wrecking service. The claim before us does not refer to members of the wrecking crew who were not called, but to regularly assigned carmen at Jackson, Tenn. who, the Organization claims, should have been called to augment the wrecking crew. This distinction renders many of the Awards relied on by the Organization inappropriate. See, for example, Awards 2048, 3629, 6703 and 6257.

Carrier insists that it was justified in utilizing the Hulcher Emergency Railroad Service to assist in the wrecking service since the derailment constituted an emergency necessitating immediate action on Carrier's part in order to resume rail operations through Dyer.

It is axiomatic that Carrier is justified in using outside forces to perform wrecking service where an emergency situation exists. See Awards 6490, 6582, 6703. However, merely alleging that an emergency existed will not suffice for Carrier must establish that such was the case. In the claim at hand, the Board concludes that the derailment of 3 locomotives and 10 freight cars at Dyer, Tenn. constituted an emergency justifying use of the Hulcher Company groundmen to assist the wrecking crew. It is not disputed that the derailment blocked Carrier's main line in the city of Dyer and disrupted all service on that portion of the railroad. This, in our opinion, constituted an emergency demanding immediate action on Carrier's part. Since Carrier was thereby justified in using the Hulcher Company groundmen to assist the wrecking crew, claim on behalf of the regularly assigned carmen at Jackson is consequently without any support.

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 28th day of February, 1975.

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MAR 21 1975

G. M. YOUHN

*Noted
mm*

CARRIER MEMBERS' RESPONSE TO LABOR MEMBERS' DISSENT
TO
AWARD 6821, DOCKET 6668

The dissent of the Labor Members consists primarily of a rehash of the arguments presented to the referee by the spokesman for that group prior to the award being issued. The arguments were found wanting when presented and repetition in the dissent does not increase their validity, or detract from the Award.

The Referee in Award 6821 correctly found that an emergency existed. The derailment blocked Carrier's main line in the City of Dyer, Tenn., disrupting all service on that portion of the railroad. In the handling of the dispute on the property the Petitioner did not dispute that an emergency existed. Furthermore, it is well settled by awards of the Second Division, as well as awards of the Third Division that when a Carrier's main line is blocked an emergency exists and Carriers are granted broad latitude in meeting such an emergency, including the use of outside forces. See Second Division Awards 1559, 5391, and 6582, and Third Division Awards 13856, 14372, 15846, 17524, 17795, and 18089, among others. Second Division Award 2987, quoted from in the dissent, dealt with an entirely different situation.

Award 6821 is sound, supported by the record and numerous precedent awards. The Monday-morning quarterbacking by the Labor Members does not detract from the Award or impair its value as precedent.

F. C. Carter
Harold Brumback
J. J. Taylor
W. B. Jones
G. M. Youhn

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MAR 21 1975

G. M. YOUHN

*Noted
mm*
LABOR MEMBERS' DISSENT TO AWARD NO. 6821,

DOCKET NO. 6668

As a basis for denying the claim in Award No. 6821, Docket No. 6668, the majority setforth the following facts:

"On October 9, 1971, there was a derailment at Dyer, Tennessee, consisting of three (3) locomotives and ten (10) freight cars. The Jackson Wrecking Crew was dispatched to the derailment site, arriving at 5:05 P.M. At approximately 7:00 P.M. the Hulcher Emergency Railroad Service, a private contractor, arrived with three (3) bulldozers, three (3) operators, two (2) foremen and ten (10) groundmen to assist in the wrecking service"

From these facts taken out of context, the majority concluded that an emergency existed and denied the claim stating:

"It is axiomatic that Carrier is justified in using outside forces to perform wrecking service where an emergency situation exist, See Awards 6490, 6582, and 6703. However, merely alleging that an emergency existed will not suffice for Carrier must establish that such was the case. In the claim at hand the Board concludes that the derailment of three (3) locomotives and ten (10) freight cars at Dyer, Tennessee, constituted an emergency justifying use of the Hulcher Company groundmen to assist the Wrecking Crew. It is not disputed that the derailment blocked Carrier's main line in the City of Dyer and disrupted all service on that portion of the railroad. This in our opinion, constituted an emergency demanding immediate action on Carrier's part."

Referee D. Emmett Ferguson stated in Second Division Award No. 2987:

"Each emergency must be determined in the light of all existing circumstances and facts confronting those involved."

The Labor Members submit that the facts in this case does not support the Majority's Finding. If there was an emergency as claimed by the majority, there wasn't any reasonable excuse why Carrier should not have called the Claimants.

On page 2 of Carrier's Submission they setforth the following facts:

1. Claimants were employed at Jackson, Tennessee.

This is the exact point from which the derrick and crew was dispatched.

2. The derailment occurred at 10:45 A.M. October 9, 1971. The Jackson, Tennessee derrick and crew were dispatched from Jackson at 1:30 P.M.

Therefore the derrick and crew did not leave Jackson until two (2) hours and forty-five (45) minutes after the derailment occurred.

3. Hulcher Emergency Railroad Service was called and arrived at the derailment site at 7:00 P.M., October 9, 1971.

- (a) The Jackson derrick and crew arrived at 5:05 P.M.

Hulcher Emergency Railroad Service arrived at the derailment site eight (8) hours and fifteen (15) minutes after the derailment occurred.

(b) They worked from 7:00 P.M. October 9th, until 12:30 A.M., October 10, 1971. They were relieved at this time and rested until they resumed work at 7:00 A.M. of the same day, working until 5:00 P.M., Page 2 of Employees Submission.

We contend that if the "Emergency" claimed by Carrier was so great the six (6) hours and thirty (30) minutes rest would not have been permitted.

4. The claim was made for only the ten (10) groundmen provided by Hulcher, not for the three (3) bulldozer operators and two (2) firemen.

It is obvious from the above facts of record that an "Emergency" did not exist, the Claimants should have been called and used instead of the ten (10) groundmen of Hulcher Emergency Railroad Service. In fact there was no valid reason why Carrier could not have called Claimants at the same time they called the Jackson derrick and crew. Since it has been proven the Claimants would have arrived two hours (2) earlier than Hulcher Emergency Railroad Service.

A number of Second Division Awards were furnished the Referee which substantiated the Employees position. One of which was Second Division Award No. 4581, wherein Referee Joseph M. McDonald stated:

"What is disturbing however, is the use of Higgins' personnel to man the crane and the rigging. It is clear that the riggers were performing work at the scene of the derailment which comes within the Carmen's 'Classification of Work' Rule. Claimants were available for this work and should have been called.

There is no showing that Carrier, in hiring the Higgins outfit was obligated to take Higgins' personnel to act as a ground crew, and we express no opinion of our disposition of that issue had it been presented."

Referee Anrod stated in his Findings in Award No. 3954, the pertinent part of which reads:

"It is a well-established rule of law generally observed in the application and interpretation of a collective bargaining agreement that such an agreement, as a safeguard of industrial and social peace, should be given a fair and liberal interpretation consonant with its spirit and purpose -- disregarding, as far as feasible, strict technicalities or undue legalism which would tend to deprive the agreement of its vitality and effectiveness. See: Yazoo & M.V.R. Co. v. Webb, 65 F. 2d. 902, 903 (Ca-5, 1933); Arbitration Award in re Cameron Iron Works, Inc., 25 LA 295, 299 (1955). * * *."

The majority failed to carry out the sound and reasonable interpretation of the word "Emergency" as set forth by Referee D. Emmett Ferguson; as well as the established rule of law as set forth by Referee Anrod.

Therefore, Award No. 6821 is palpably erroneous.



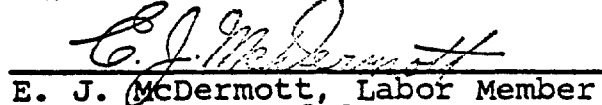
G. R. DeHague, Labor Member



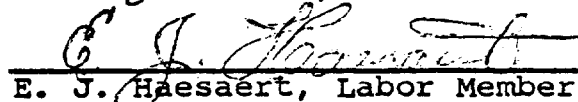
D. S. Anderson, Labor Member



William O. Hearn, Labor Member



E. J. McDermott, Labor Member



E. J. Haesaert, Labor Member