

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: ( System Federation No. 42, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated terms of the controlling agreement when on September 22, 1972 they used employees of Wilson Sand Company to assist Carmen in rerailling six (6) cars at Whitmore, South Carolina.
2. That accordingly the Seaboard Coast Line Railroad Company be ordered to compensate Carmen E. H. McMullen, C. B. Dickerson, and R. L. Morton, nine and one-half ( $9\frac{1}{2}$ ) hours each; J. Hurst, eleven and one-half ( $11\frac{1}{2}$ ) hours; and R. G. McLarty, fourteen and one-half ( $14\frac{1}{2}$ ) hours; and P. N. Salmon, eighteen (18) hours, at overtime rates.

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.

Six camp cars were derailed on a spur track at Whitmire, South Carolina on September 21, 1972. The Carrier's General Car Supervisor was sent from Atlanta, Ga. to assess the situation. The Carrier determined to reraill the cars by utilizing two Carmen stationed at Greenwood, South Carolina and contracting with the Wilson Sand Co. for the use of a crane and an operator and oiler. The crane and the two employees of the Wilson Sand Co. were utilized for seven hours; and the two Carmen worked  $11\frac{1}{2}$  hours each during the rerailling operation.

The Organization contends that the Carrier had a contractual obligation to call and use the claimants for the work at Whitmire. The Carrier disagrees and further contends that the cost of using the Atlanta wrecker, located some 200 miles from Whitmire, would be prohibitive.

Awards of this Division have held that wrecking service work belongs to the wrecking crew when a derrick or similar equipment is used, unless the use of a substitute for the derrick is necessitated by an emergency. See Awards 4964, 4186 and 1327. Clearly, in the case at hand there was no emergency, and there were no contentions made in this regard. Concerning the Carrier's contention about the distance and resulting costs involved if the Atlanta Wrecking crew were utilized, it must be clearly asserted that this Board cannot sanction a violation of the parties' Agreement in the name of economy.

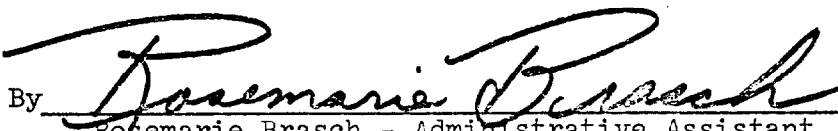
We find that the use of the crane and employees of the Wilson Sand Co. and the use of the two Carmen at the Whitmire derailment violated the Agreement and we shall sustain the claim. Due to the extremely narrow circumstances of this case we shall sustain the claim only to the extent of the total hours actually utilized by the improperly constituted work team at Whitmire. The difference in amount of time claimed for the various claimants in the Statement of Claim is the result of their duty hours at their home station. Notwithstanding such differences, the claim for the six claimants shall be paid at the straight time rate for an equal amount of hours, that being 6 1/6 hours per individual.

A W A R D

Claim sustained as per Findings.

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 7th day of April, 1975.