Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7181
SECOND DIVISION Docket No. 7008
2-L&A-CM-'76

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

Parties to Dispute: (System Federation No. 3 (59), Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Louisiana and Arkansas Railway Company

Dispute: Claim of Employes:

1. That on April 10, 1974, at Deramus Yard, Shreveport, Louisiana, the Carrier violated the controlling agreement by using an outside contractor's equipment and crew to rerail MP 602579.

2. That, accordingly, the Carrier be ordered to compensate Carmen:

R. P. Tyler
P. H. Merritt
G. Lazarus

in the amount of four (4) hours each at pro rata rate.

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.

The matter arises out of the Carrier's use of an outside contractor's equipment and crew to rerail an empty car derailed at the end of a dead end track in the Carrier's yard. No contention was made of an emergency situation, requiring immediate rerailment of the car. The Organization claims that Carmen should have been used for this work, and seeks pay for three Carmen, with accrued interest, for the Carrier's failure to employ them for this work. The Claimants were all on duty at the time the rerailment occurred.

Reliance is made by the Organization on Special Rules 95 and 90 and General Rule 28.

This Board will not again review the findings of many previous Awards, in particular Award No. 6361 (Bergman), which find that employes other than Carmen may be utilized for rerailment work when wrecking crews are not called.

Special Rule 95 is entitled "Wrecking Crews" (the heading being of particular significance) and reads as follows:

> "Regularly assigned wrecking crews, including engineers and firemen, will be composed of carmen, and will be paid for such service under Rule 11.
>
> When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.
>
> When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will be used. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work.
>
> Meals and lodging will be provided by the Company while crews are on duty in wrecking service."

This Board reiterates previous findings that the two sentences of the third paragraph of Special Rule 95 must be read in concert, and are inapplicable in this instance since no wrecking crew was called.

Contrary to the Carrier's stated position, however this instance is not an exact duplication of the matter covered in Award 6361. The question is not whether Carmen, rather than other classifications of the Carrier's employes, should be utilized, but whether the collective bargaining agreement permits the use of an outside contractor and his crew in place of Carmen for this non-emergency rerailment within yard limits.

A closely analagous situation was covered in Award No. 6454 (Bergman) in which, for a derailment situation, a carrier employed a mobile derrick crane with two operators "from an outside concern", along with three Carmen. The Organization sought pay for two Carmen because of the work performed by the crane operators from the outside concern. The carrier's defense was that "a crane was needed but that the nearest carrier owned derrick was at Atlanta, 160 miles away, and would require 10 hours to reach the derailed cars; that the need to clear the main line promptly was an emergency which justified the rental" of outside equipment. The Board found in this case that, "No proof has been offered to show that /the claimants/ could have taken the place of the two outside employes to rerail the cars without delay."

These facts are in sharp contrast to those in the case now before the Board. The derailed car was at the end of a dead track. No evidence was provided to show that the rerailment could not have been effectively

accomplished by Carmen or other employes of the Carrier. While, as noted above and in many previous Awards, Carmen do not have exclusive rights to this work within yard limits absent a wrecking crew, it appears that the Claimants' call for the work has precedence over the use of an outside contractor in this particular situation. This finding relies on the logic of Award No. 6454, where, however, different circumstances led to a different conclusion.

The fact that the Claimants each worked a full day on the date in question does not eliminate the Carrier's requirement as to a monetary remedy. See Award Nos. 3405 (Carey), 4332 (Anrod), and 7107 (Twomey). The award shall be for four hours' straight time pay to each of the Claimants, or such lesser period of time which the Carrier can demonstrate actually transpired in the work at the scene by the outside contractor's crew, whichever is the lesser. Claim for interest will not be sustained. Nor do the findings in these particular circumstances diminish the principle established in Award No. 6361 in reference to Carmen vs. other employes of the Carrier.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of November, 1976.