

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. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement the Missouri Pacific Railroad Company improperly assigned other than Carmen (wrecking crew members) to assist and complete clearing up a derailment at Spadra, Arkansas, beginning January 12, 1975.
2. That accordingly, the Missouri Pacific Railroad Company be required to compensate wrecking crew members W. W. Wilson, M. T. Linz, P. A. Piechoski, M. H. McGary, J. D. Cantrell, H. E. Ison, C. V. Kita, L. W. Wise and L. S. Johns ninety (90) hours each at pro rata 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.

The North Little Rock Wrecker and Crew was called for a derailment at Spadra, Arkansas at 12:10 P.M., January 10, 1975. The Wrecker and Crew worked from 7:15 P.M., January 10, 1975 until 11:40 A.M., January 11, 1975, clearing the main line. The Carrier also contracted for the services of the Hulcher Company, whose equipment and crews arrived at the derailment and began work at 8:45 P.M. on January 10, 1975. The Carrier released its own Wrecker and Crew to return to North Little Rock for standby duty to protect against possible disruption of service; and kept on the outside contractor's equipment and forces from January 11, 1975 through January 16, 1975. These forces worked eight hours a day on the duties in question.

The Hulcher equipment used were two bulldozers with side booms, one front-end loader and one heavy D-8 Caterpillar tractor all equipped with winches. The Organization contends, and it is not denied, that Hulcher's equipment replaced the Carrier's Wrecker crane in performing the rest of the work of clearing the derailment. In Award No. 4835, involving the same parties to this Agreement, we held that two draglines used in lieu of the wrecking derrick to handle a derailment outside yard limits was a contract violation. We find in the instant case that the Carrier violated Rule 119(a) and Rule 120 when it utilized the equipment and personnel of an outside contractor in lieu of its own wrecking crane and crew to clear up the derailment at Spadra, for that period of time after the main line was opened and the emergency conditions of the main line blockage had ceased.

The fact that the Coffeyville, Kansas Wrecker was out of service and the Kansas City, Missouri Wrecker was in service cannot serve as a justification for this contractual violation.

Under the narrow circumstances of this case the Claimants are entitled to be made whole for the wage loss, if any, resulting from this contract violation. The Organization seeks 90 hours pay at pro rata rates; a claim for 90 hours is not supported by the record, and is rejected. The Carrier contends that had the Wrecking Crew been retained at the derailment site and worked the same eight-hour days as the Hulcher crews, they would not have earned more than they were actually compensated for this period.

We accept the Carrier's statements concerning the total number of hours of work involved, since the record does not disclose anything to the contrary. However, the test is not how the Hulcher Company and the Carrier may choose to assign these outside forces, but rather how the Carrier would have assigned its own forces, had the contract not been violated. After a main line is opened, Carrier would still have the pressure to complete the work of clearing up the derailment, in order to return the Wrecker to its home station to protect against other possible disruption of service. The question then is, would the Carrier have employed 8 hour per day assignments? The Carrier is ordered to examine its records for the three preceeding major derailments (four days work or longer) prior to January 10, 1975, involving the North Little Rock Wrecker; and to ascertain the average work day of the Wrecking Crew for dates after the main lines were cleared, not utilizing the partial work dates, if any, of the final work day at the derailment sites in computing this average figure. Based on the average work day established by the above procedures, each Claimant is entitled to be paid what he would have earned, had the Wrecking Crew been allowed to complete the work in question, less what he was paid for that specific period of time.

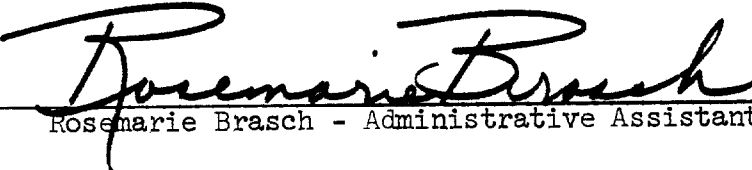
A W A R D

Claim sustained as set forth in 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 6th day of January, 1978.

