

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (System Federation No. 100, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Consolidated Rail Corporation

Dispute: Claim of Employees:

That within the meaning of the controlling agreement, particularly Rules 11, 121, 124 and 125, the Carrier unjustly dealt with the members of the Sayre Wreck Crew when they used employees of a private company and their equipment in performing wrecking service on July 21 and 22, 1975 at Glendon, Pa.

That accordingly the Carrier compensate Arnold L. Cochi, Richard Bently, R. Alexander, Sr., D. Novak, O. J. Alexander, John Sparduti, Leo Bentley, Rich Cole, Clement Altieri and R. Alexander, Jr., members of the Sayre Wreck Crew, three (3) hours at the time and one half rate of pay for July 21, 1975, and four (4) hours at the time and one half rate of pay for July 22, 1975, plus the number of hours travel time to and from the derailment at Glendon, Pa.

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 facts are contested, nevertheless, we are able to establish clearly enough from the record that a derailment occurred at Glendon, Pennsylvania on July 21, 1975. The closest wreck force was located at Allentown and they were called out. In addition, the Sayre crew was called but subsequently was stopped by Carrier at Laceyville and returned to their home base. At the derailment site the Carrier utilized an outside service. Hulcher Wrecking Service worked on the derailment on July 21 and 22, 1975. It is not clear from the record whether the Allentown crew worked on July 22, 1975. The Organization contends that crew did not work on that date.

On the property, neither side made a point of describing this condition as an emergency. However, before this Board, the Carrier maintains these were emergency conditions in that the mainline was blocked. The Employees take a contrary view but they do not justify that position based upon the record. There is no indication this was an issue on the property. Therefore, we must evaluate the facts and we are of the view that a serious derailment of this nature where trains are blocked amounts to an emergency.

The Employees rely upon Rules 11, 121, 124 and 125 of the applicable agreement. Rule 125 appears to be most in point and provides:

"When wrecking crews are called for wrecks or derailments, a sufficient number of the regularly assigned crew will accompany the outfit.

This shall not be construed to prevent train crews from rerailling cars or locomotives, when wrecker is not required."

The Carrier states

"Our Board has repeatedly held that rerailling service is not the exclusive function of Carmen especially where - as here - the Classification of Work Rule does not so provide. WHEN a wreck crew is called - then the work accrues to Carmen."

We are inclined to agree with this statement as a general principle. We believe it is supported by the better reasoned awards of this Board. But this general principle only carries us so far and is not decisive of the dispute here. Rule 125, quoted above, makes reference to "when wrecking crews are called". Clearly, if the wrecking crew was not called, no rights would accrue to them. That is the very question we have before us.

The Sayre crew was admittedly called and despatched to the wreck site but before reaching the site, it was stopped at Laceyville and ordered to return to its home base. The reason for this, as explained by Carrier on the property, was that it was determined the Sayre crew was not necessary "since the Allentown Wreck Crew and Hulcher's Emergency Railroad Service, Inc. (the outside contractor) was at the scene of the derailment.

We are mindful that the wording of Rule 125 involves the words "when wrecking crews are called". The parties have not seen fit to assist this Board by citing authoritative awards of this Board as to the meaning of the word "called". If we follow a literal interpretation we would be forced to conclude the Sayre crew was in fact called. But we think such an interpretation would unduly restrict the Carrier particularly under emergency circumstances. In Award 5306 (Weston) this Board dealt with a somewhat similar situation except that the claiming wrecking crew was alerted for two hours and, apparently, did not proceed to the wreck site. There the

Board denied the claim. The rule invoked was identical in pertinent part, with Rule 125 here. There the opinion stated, in relevant portion:

"The fact that Claimants were alerted for two hours and then not assigned the work does not affect the situation. Award 3831."

We do not view the situation here as materially different from the alert described in that award. When an emergency exists as the consequence of a wreck or derailment, Carrier is entitled to take action, even without full knowledge of the facts of the situation. More precise knowledge is likely to come later. In the interim it may alert various wreck crews some distance away and even instruct crews to proceed toward the wreck site before it can be held to have invoked the provisions of Rule 125. If its appraisal of the facts indicates that the alerts may be lifted or wrecking crews enroute may be headed off, it should be permitted to do so. It follows, therefore, that the Sayre wreck crew did not reach the wreck site and did not perform work there. Accordingly, the rights of exclusivity it asserts did not attach.

With respect to Carrier's use of the Hulcher Wrecking Service, Inc. (the outside contractor) it did so in reliance upon the well established position of this Board that a Carrier is justified in augmenting its wrecking crew with outside forces where there is an emergency. Award 6821 (O'Brien). If there is any dispute between the Allentown wreck force and the outside contractor, that is not Claimant's concern, nor is it a matter for consideration here.

Clearly, the Carrier acted reasonably here when it alerted all available forces when the emergency occurred. The Sayre crew was turned back before it reached the wreck site and was paid for time worked under the Agreement. It is not entitled to more.

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 25th day of April, 1978.

LABOR MEMBER'S DISSENT TO AWARD NO. 7524 - DOCKET NO. 7404

In reaching its conclusion, the Majority states in part:

"...Clearly, if the wrecking crew was not called, no rights would accrue to them. That is the very question we have before us.

.....

We are mindful that the wording of Rule 125 involves the words 'when wrecking crews are called'. The parties have not seen fit to assist this Board by citing authoritative awards of this Board as to the meaning of the word 'called.'....."
(Emphasis added.)

The Majority failed to take note of Carrier's own statement in its Submission which was as follows:

"However, once the decision is made to use a wreck crew, the Carrier is constrained to call a sufficient number of the regularly assigned wrecking crew in accordance with Rules 124 and 125. This the Carrier did in this case." (Emphasis added.)

and in its rebuttal where Carrier stated:

"The key word in the rule is 'when' and here it was called." (Emphasis added.)

With that admission by Carrier the Board hardly needs authoritative Awards defining "when" a crew is called.

The Board had before it Second Division Awards 6030, 6490 and others which hold that where a wrecking crew is called and wrecking equipment used that work belongs to Carmen. Award No. 6490 deals with a dispute not unlike the one at hand.

The Majority cites and quotes from Second Division Award No. 5306 then states in part:

"We do not view the situation here as materially different from the alert described in that Award. When an emergency exists as the consequence of a wreck or derailment, Carrier is entitled to take action...."

The Majority has failed to take cognizance of the fact that another wrecking crew was called and used which placed all the work under the Carmen's jurisdiction (Award No. 6030 and 6490). The Majority further takes it upon itself to institute an affirmative defense for Carrier even though Carrier did not do so on its own. At no time did Carrier allege an emergency in defense of its action. And the record shows that the main line was cleared at 6:00 p.m. on July 21, 1975 and Hulcher employes and the Allentown Crew were tied up at that point until 6:00 a.m. July 22, 1975. That fact clearly removes any emergency claim and has been so held by this Division.

The Majority continues with the following:

"If there is any dispute between the Allentown wreck force and the outside contractor, that is not Claimant's concern, nor is it a matter for consideration here."

We believe the citation without our comment is sufficient to reveal that the majority has failed to comprehend the meaning of the wrecking service rules placed before the Board along with the many precedent awards.

For the reasons set forth herein, we find it necessary

Dissent to Award No. 7524

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to voice a dissent to the Award.

A handwritten signature in black ink, appearing to read "C. E. Wheeler". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

C. E. Wheeler
Labor Member