Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8107
SECOND DIVISION Docket No. 7936
2-WM-CM-'79

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Western Maryland Railway Company

Dispute: Claim of Employes:

1. That under the controlling Agreement, the provisions of the December 4, 1975 Agreement and Rule 96 of the controlling Agreement was violated on March 28, 1977, when the Carrier failed to call the assigned wrecking crew at Port Covington, Baltimore, Maryland on the Western Maryland Railroad for a derailment at Greenmount, Maryland, and in their place called a wreck outfit off the Baltimore and Ohio Railroad.

2. That accordingly the Carrier be ordered to compensate Carmen F. J. Lavicka, H. T. Wasmus, R. P. Jester, H. G. MacDonald, G. Jenning, and C. J. Leiberto for eight (8) hours' pay at time and one-half rate and eight (8) hours' pay at double time rate. Carmen F. J. Lavicka, H. T. Wasmus, R. P. Jester, H. G. MacDonald, G. W. Jenning, and C. J. Leiberto hereinafter referred to as the Claimants, were employed by the Western Maryland Railway Company, hereinafter referred to as the Carrier at Port Covington, Baltimore, Maryland.

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.

This is a companion case to Award 8106, involving the same derailment situation which led to the claim filed in Award 8106. The cases differ in the respect that the independent contractor called in Award 8106 could not perform the rerailing work on the locomotives involved. Carrier, therefore, called on a Baltimore and Ohio 250 ton wrecking crane with a long boom and crew to assist the Carrier's Hagerstown, Maryland 250 ton wrecking crew and crew to rerail the locomotives.

Petitioner asserts that Carrier's Port Covington wreck outfit utilizes a 160-ton crane "which is more than sufficient to handle one end of any diesel locomotive ever built", and that it had been used to perform such work "in prior years".

Carrier asserts that a long boom crane with a greater capacity than the 160-ton capacity short boom crane at Port Covington was required to assist the 250 ton Hagerstown wreck crane, and, therefore, it called upon the B&O Baltimore crane and crew, as a contractor and so reimbursed B&O.

The record indicates that Carrier first called the Hagerstown outfit and crew at 11:00 p.m., March 21, 1977 and they left the derailment site at 2:15 a.m., March 24, 1977. The B&O crew was called for service at 3:30 a.m., March 23, 1977 and left Greenmount at 12:18 a.m., March 24, 1977. The Hagerstown crane and crew worked "in conjunction with" the B&O crane and crew to rerail the locomotives.

Petitioner has not successfully controverted Carrier's statements as to the need for a long-boom crane with capacity to match the Hagerstown 250-ton derrick.

The arguments and contentions of both parties in the instant case are the same as those advanced in Award 8106.

B&O functioned in the instant case as an independent contractor. Article VII of the December 4, 1975 agreement is applicable. We shall deny the claim for the reasons outlined in Award 8106.

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 27th day of September, 1979.

LABOR MEMBERS' DISSENT TO AWARDS NO. 8106 & 8107

DOCKETS 7935 AND 7936

The record is sufficiently clear that no members of the Carrier's Wrecking crew worked with the contractor at the wreck scene giving rise to these disputes. It is correct that Carrier's wrecking crew was called but it worked only with Carrier's wrecking outfit at the opposite end of the derailment.

Article VII of the National Agreement dated December 4, 1975 reads in pertinent part:

> ". . .a sufficient number of the Carrier's assigned wrecking crew, if reasonably accessible to the wreck, will be called(with or without the Carrier's wrecking equipment and its operators) to work with the contractor . . ."
>
> (Emphasis is added)

The rule prohibits the Carrier from utilizing the services of a contractor's ground forces when the Carrier's wreck crew is reasonably accessible and available, as was the Carrier's wreck crew in the instant case. Since the Carrier's wreck crew was reasonably accessible and available, they should have been called "to work with the contractor", as provided for under the rule. Webster's New Collegiate Dictionary defines "with", in general, as denoting "a relation of proximity, contiguity, or association. . . . Association in respect of accompaniment: hence, alongside of; in the company; "and when applied to the terms of Article VII, provides that Carrier's wrecking crew will work with the contractor (alongside of; in the company of), not at the other end of the derailment. Clearly then, when Carrier called outside contractors and utilized them to work at one end of the derailment, while

Carrier's wrecking crew and equipment worked at the other end of the derailment, the Agreement was violated.

Without a doubt, the fact that Carrier did call its own wrecking crew and equipment to work at the derailment, did not relieve them of their obligation to call additional groundmen to work with the contractor, as provided for under the rule.

No wrecking crew members were called to work with the contractor. Also, operators denotes more than one. To hold that Carrier can relieve its obligation to its employes by calling out the members of one crew which does not work with the contractor, does irreparable damage to an agreement negotiated in good faith which has for its purpose the use of Carrier's ground forces with the contractor when performing wrecking service if they are readily accessible.

The majority failed to grasp the true language of the agreement and issued an erroneous award which requires this dissent.

J. C. Clementi

John Clementi - Labor Member