

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { System Federation No. 7, Railway Employees'  
                          { Department, A. F. of L. - C. I. O.  
                          { (Carmen)  
                          {  
                          { Soo Line Railroad Company

Dispute: Claim of Employees:

1. The Soo Line R. R. violated Rules 28, 94, 97 and 98 of controlling agreement when on March 28 and March 29, 1977 they secured the services of an outside contractor consisting of two (2) operators and equipment from Avon, Minnesota to rerail cars due to derailment of train No. 942 on a siding at Paynesville, Minnesota on March 25, 1977.
2. That accordingly the Soo Line R.R. Co. be ordered to compensate the Shoreham Shops, Minnesota Wrecking Crew members, namely:

Carmen	William Vados	Wrecking Engineer
	David Terry	Wrecking Engineer
	Ray Korzenowski	Ground Crew
	Allen Wilnot	Ground Crew
	William Fish	Ground Crew
	Douglas Granville	Ground Crew
	Delmar Parvey	Cook

in the amount of sixteen (16) hours at the Carmens time and one half rate of pay each.

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 threshold question raised in this dispute is whether or not the precise conditions surrounding the derailment at Paynesville, Minnesota on March 25, 1977 and immediately thereafter posed an indisputable emergency that warranted the use of an outside contractor.

Claimants argue that Carrier violated Agreement Rules 28, 94, 97, and 98 respectively when outside forces were retained to perform this work, while Carrier contends that the nature and the extent of the derailment coupled with the impracticallity of rebuilding the track before being able to position Carrier equipment at the derailment **site justified its action.**

Our review of the record, particularly the data depicting the magnitude of the derailment, does not support petitioners assertion that it was feasible to use the Shoreham wrecker. On the contrary, we find that given the unmistakable emergency that existed and Carrier's non ownership of mobile equipment, that Carrier acted responsibly and consistent with its managerial prerogatives as defined in our predecessor Awards. (See, for example, Second Division Awards 4190, 6177, 6602, 6757 and 7979.)

In Award 7979, which is on all fours with this dispute and involving the same parties and the same type of issue, we held that Carrier's determination to use an outside contractor was plainly permissible under the circumstances and denied the claim. We find this ruling directly applicable to the fact specifics herein and thus we are compelled to deny this claim. An emergency was present that required Carrier to use an outside contractor to clear and revitalize promptly the derailment site and it was neither a contract violation nor an abuse of managerial discretion.

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 16th day of January 1980.