

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. 6, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
{ Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That the Elgin, Joliet & Eastern Railway Company, hereinafter referred to as the Carrier, violated the current working agreement, specifically Rule 50, on Wednesday, February 15, 1978 when they contracted the Chicago and North Western Transportation Company to use their equipment and crew to perform the necessary wrecking work to upright and rerail empty box car L&N 111163 located at the Commonwealth Edison Company Plant in Waukegan, Illinois.
2. That the Carrier be ordered to compensate the Derrick #5 crew consisting or Mr. Stainback, C. Cook, P. Lopez, J. Pompuch, J. Bick, G. Gabriel, J. Loftis and D. Clements for eight hours each at the Carman's rate of pay plus an additional seven hours each at the time and one-half rate for travelling and call time. The above-named Carmen are hereinafter referred to as Claimants.

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.

An accident occurred on February 15, 1978 at the Commonwealth Edison Company plant in Waukegan, Illinois involving the derailment of car WP 35891 and the derailment and overturning of car L & N 111163. Carrier's Wreck Truck No. 157 was called to rerail WP 35891. The Wreck Truck and its crew were not capable of uprighting and rerailing L & N 111163, and the crew was ordered to return to its previously assigned work. To perform the work, the services of the wreck truck of another Carrier, with supervisor and three-man crew were called in to perform the work.

The Organization claims that, under Rule 50, the eight-man crew of Wrecking Derrick #5 should receive eight hours' pay plus seven hours' travel time at the punitive rate for each member of the crew.

Rule 50, Paragraphs (a), (b) and (c) read as follows:

"Wrecking Crews

- (a) Wrecking crews, including crane engineers, firemen and cooks, shall be composed of regularly assigned Carmen, and will be paid for such service as per general rules from time called until return to their home station. Meals and lodging will be provided by the Company while crews are on duty in wrecking service.
- (b) When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will, if necessary, accompany outfit. For wrecks or derailments within yard limits sufficient Carmen will be called to perform the work.
- (c) When pursuant to rules or practices, a Carrier utilizes the equipment of a contractor (with or without forces) for the performance of wrecking service, 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. The contractor's ground forces will not be used, however, unless all available and reasonably accessible members of the assigned wrecking crew are called. The number of employes assigned to the Carrier's wrecking crew for purposes of this rule will be the number assigned as of the date of this agreement.

NOTE: In determining whether the Carrier's assigned wrecking crew is reasonably accessible to the wreck, it will be assumed that the groundmen of the wrecking crew are called at approximately the same time as the contractor is instructed to proceed to the work."

The Carrier cites numerous previous awards denying pay to Carmen for wrecking services under a variety of circumstances. Without finding fault with the reasoning in such awards, the Board nevertheless finds that the particular circumstances here involved require the application of Rule 50 (c), in that the Carrier utilized the "equipment of a contractor ... for the performance of wrecking service..." Under the circumstances, where Carrier's wreck truck had already been involved in a portion of the work at the location in question, the claim for pay of Rule 50 (c) is sustainable, inclusive of applicable travel time as referred to in Rule 50 (a).

The Organization's claim is excessive, however, in calling for pay for an eight-man derrick crew, since no showing was made that such equipment or number of employees would be required if the Carrier itself had undertaken the work. Further, there is no dispute that the contractor who performed the work did so with a three-man crew, charging the Carrier for 28 hours of work.

The claim will therefore be sustained to the extent of payment of a total of 28 hours to be divided among three employees, plus three hours' travel time for each of the three employees determined judgmentally based on the distance displayed in the record. As in other instances involving pay for work not actually performed, all pay shall be at straight-time rate. The parties shall meet to determine which three employees shall be paid.

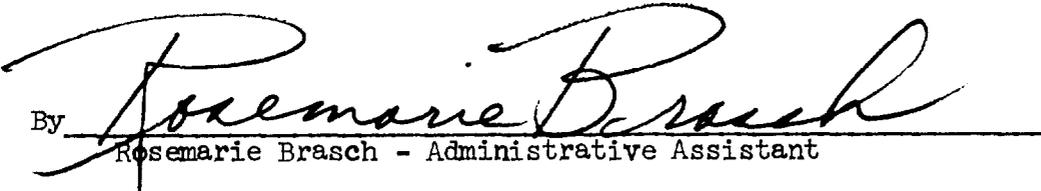
A W A R D

Claim sustained to the extent provided in the 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 26th day of March, 1980.