

The Second Division consisted of the regular members and in addition Referee Wesley A. Wildman when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

No. 1. That under the controlling Agreement the Carrier failed to call Carmen C. L. Biettner, P. W. Long, R. C. White, P. R. Mahl, and G. B. Bectel for work in connection with a derailment at Willard Yards, Willard, Ohio on April 21, 1977, at which time carmens wrecking work, within the yard limits, was contracted out to Hulchers Wrecking Service.

No. 2. That the Carrier failed to comply with the rules of the controlling Agreement, specifically, Rule 142 and Rule 29, and also Wrecking Service Rule, effective March 27, 1976.

No. 3. That accordingly the Carrier be ordered to compensate the above identified employees for their losses arising out of this incident at the Willard Yards, when the Carrier arbitrarily allowed Hulchers Wrecking Service to perform carmens work in lieu of available carmen; eight (8) hours and ten (10) minutes pay at the time and one-half rate for all claimants with the exception of Carman G. Bectel; six (6) hours and ten (10) minutes pay at the time and one-half rate of pay for Carman Bectel.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On April 20, 1977, at approximately 10:20 p.m., a ten car derailment occurred in the eastbound classification yard of the Carrier's property at Willard, Ohio.

Carrier determined that off track equipment would be required to re-rail the cars and, accordingly, called for the Hulcher Emergency Service (a so-called "outside" contractor) which arrived with its equipment at 9:50 a.m. on the next

morning, April 21st. The Hulcher group accompanying their equipment consisted of five (5) crew members and three (3) foremen.

The Organization asserts that the five (5) Hulcher crew members did ground work on April 21st which should have and could have been assigned to available carmen of Carrier. Carrier denies that the Hulcher employees did any significant volume of ground work, and insists that the total of seven (7) carmen (never more than five (5) working at one time) assigned by it to the rerailling task did all of the ground work that was available for carmen to do.

The petitioning Organization argues that Rules 29 and 142 of the controlling Agreement and Article VII, the "Wrecking Service Rule", of the December 4, 1975 Agreement are applicable to the facts of this case; the Carrier acknowledges the applicability only of Rule 142 to the fact situation before us.

It is not necessary here to discuss in detail, or rule on, the applicability of non-applicability of either Rule 29 or the "Wrecking Service Rule" of the December 4, 1975 Agreement. Both parties concur that Rule 142 is applicable and both agree that the essential issue in this case and under this Rule is, did the Company under the circumstances prevailing, meet its obligation to call, per Rule 142, "sufficient carmen ... to perform the work". Rule No. 142, in its entirety, reads as follows:

"When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

What does the record disclose with regard to the essential question of fact in this case?

1). The petitioning Organization would have us draw an inference from the presence per se of the Hulcher crew to support its position that Carrier did not assign sufficient of its own carmen to perform the work to be done. It is argued that the very fact that five (5) Hulcher crewmen came to the property and presumably worked is proof that five (5) carmen should have been called to perform whatever tasks the Hulcher employees were engaged in.

2). The seven (7) carmen of Carrier who, at one time or another, worked on the derailment signed identical statements asserting in material fact that, "Hulcher Wrecking Company arrived ... and immediately engaged in wrecking work such as carrying hooks and cables, which is considered to be carmen's work".

3). A foreman of Carrier, one Puckett, stated in writing that "(T)he work performed by the Hulcher ground crew and ~~foremen~~ was work consisting of hooking cables, blocking, chaining to trucks".

Carrier makes much of the fact that the carmen's statements mention specifically only that Hulcher's employees were doing work "such as carrying hooks and cables". Carrier acknowledges that this might well have been the case, the equipment in question belonging, after all, Carrier points out, to the Hulcher crew's employer. The Carrier asks us, in effect, to draw an essentially negative inference from the rather mild assertions contained in the statements of the Carrier's employees. The Carrier argues that if Hulcher's employees had, for instance, done actual hooking as against simply carrying hooking equipment, the Carrier's carmen surely would have so charged in their statements.

As to the foreman's statement, it does indeed contain a stronger claim with regard to Hulcher's crew doing ordinary ground work than is found in the employee avowals. This simple statement by the foreman, however, was never subjected to verification in a hearing, and is unsubstantiated and not expanded on by corroborating evidence.

As to the inference the Organization would have us draw from the presence on the property of the Hulcher crew, we are reluctant to assume that, during whatever time they were actually working on the day in question, they were necessarily doing routine ground work which should or could have been done by Carrier carmen. It is at least conceivable, for instance, that they may have been engaged in some chores requiring skills peculiar and unique to the equipment that they brought with them onto the property.

On the record before it, this Board states that it frankly does not have sufficiently persuasive and credible evidence to allow it to judge whether or not a significant volume (more than de minimis) of ground work was performed by the Hulcher crew which could and should have been performed by the Carrier carmen under Rule No. 142. We decline to make a decision on the basis of supposition, circumstance, and inconclusive, unsubstantiated assertion.

Thus, while we are not finding in favor of the Organization in this case, we are not so much denying their claim as we are dismissing it for lack of adequate and conclusive evidence.

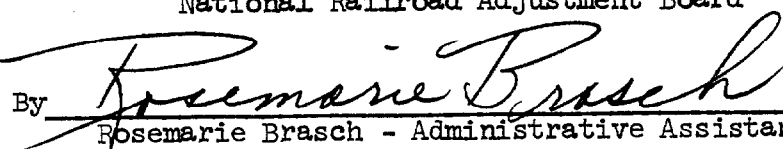
A W A R D

Claim dismissed.

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 11th day of June, 1980.