Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10153
SECOND DIVISION Docket No. 10042
2-BN-CM-'84

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Burlington Northern Railroad

Dispute: Claim of Employes:

1) That the Burlington Northern Railroad violated the terms of the controlling agreement, particularly Rules 27(a), 83 and 86, when they relieved the Spokane wrecking crew from service and retained M. L. Hulcher wrecking service equipment and employees at the Crossport, Idaho derailment March 15 through 16, 1981.

2) That accordingly, the Burlington Northern Railroad be ordered to additionally compensate Spokane wrecking crew Carmen L. J. Stitt, John Sherwin, R. E. Garinger, R. M. Prete, G. A. Sturmer, R. G. Mark and C. L. Empson in the amount of thirteen (13) hours' pay each, at the wrecking service rate of time and one-half (1-1/2) as claimed for service on March 15 through March 16, 1981.

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 employes 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 the date of March 14, 1981, a derailment occurred at Crossport, Idaho. The Carrier immediately dispatched two wrecking crews, one from Spokane, Washington and one from Whitefish, Montana, to the scene of the derailment. Both crews were accompanied by 250 ton wrecking derricks. The two crews arrived at the scene at about 11:30 p.m. and immediately started rerailing cars and cleaning up the wreck. Carrier also called an outside contractor's wrecking outfit (M. L. Hulcher) which arrived at the derailment at about 3:30 a.m. on March 15, 1981, together with a crew and also went to work rerailing cars and cleaning up the wreck. Hereafter we have a dispute on the facts. According to the employees, shortly after the Hulcher wrecker arrived at the scene, the Carriers, Whitefish wrecker and crew was sent back to Whitefish, Montana, and the Spokane wrecker and the Hulcher wrecker together with their assigned crews remained on the job.

According to Carrier the Spokane wrecker and crew were sent back to Spokane and the Whitefish wrecker and crew were retained on the job.

Later in the day, and again according to the Employees, the Spokane crew was instructed to unload equipment needed in the course of the wrecking service (rail panels, rail ties and run around hoses) also instructed to leave (spot) their wheel car at the scene to supply the wheels required to rebuild trucks on equipment damaged in the wreck. At 5:30 p.m. on March 15, 1981, they were relieved from service and returned to Spokane at about 9:00 p.m. The Hulcher wrecking crew remained on the job and completed it at 10:00 a.m. on March 16, 1981 or thirteen (13) hours after the Spokane crew had returned to Spokane. We shall refer to this dispute over the facts later.

The Employees contend that when the Carrier released the last Carrier wrecking crew and retained the Hulcher wrecking crew to complete the job they were in violation of Carmen's Rules 27(a), 83 and 86. They also furnish copies of Second Division Awards 6030, 6257, 6490, 6703, and 10010.

The Carrier contends that the issues in this case are:

1. Whether any rule in the agreement requires that wrecking service outside yard limits must be performed exclusively by Carrier's wrecking crew.

2. Whether the claim for 13 hours pay at time and one-half rate is excessive under any circumstances.

The Carrier also argues that:

1. This claim is based on the contention that it was a violation of the agreement to have employees of the Hulcher Company perform wrecking service.

2. Since the performance of wrecking service does not belong exclusively to Carmen, there is no validity to the claim.

3. Wrecking service is not listed as being Carmen's work.

4. Rule 86(b) does not require the use of wrecking crews, but instead provides that when they are called for wrecks outside yard limits, the crew will accompany the outfit.

5. The phrase "when needed" means that the Carrier is not required to call any of its employees when it does not need them, and in this case the Carrier did not need the Claimants.

Carrier also cites and furnishes copies of Awards 6322, 7124, 6177, 7071, 6286, 6757, 7526, 8679, 8697, 6259, 6732, 8106, 7979, 8235, 8699, 6845, 7356, and 8064.

We have carefully considered the facts of the case as well as all of the Awards submitted by the parties and note the following:

There is a dispute between the parties as to which of the Carrier's wrecking crews were first sent back to their home point, it appears that the Employees' statement is correct, however we do not consider this as being overly important as the claim is only for time after the last Carrier wrecking crew was sent home.

We also note that in correspondence during handling on the property, Carrier alleged that the Claimants were not members of a wrecking crew and accordingly Carrier was under no obligation to call them, Carrier later acknowledged that this allegation was incorrect.

Carrier has also claimed that wrecking service is not listed as Carmen's work, we disagree, the fact that it is not included in Rule 83 is meaningless as work is very frequently listed under more than one rule, further this Board has in countless Awards held that wrecking and rerailment service is Carmen's work, but in some cases, not exclusively.

In the awards cited by the Carrier, none involve the same factual circumstances as in the instant case wherein the employees were replaced by employees of the Hulcher Company and accordingly furnish little support for the Carrier's position and no less than six cases involving wrecking service were sustained, this in addition to those others cited by the Employees.

This case is also on all fours with Award No. 10010, what was said in that case equally applies to this case and the award must be the same.

A W A R D

Claim sustained but at the straight time rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1984.