

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated the controlling agreements, particularly Rule 121, Memorandum of Agreement of May 31, 1979 and Letter of Understanding of May 31, 1979, when they arbitrarily assigned outside contractor Pat Baker to perform wrecking service at Harlingen, Texas without calling sufficient members of their own wrecking crew.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to compensate wrecker crew members J. L. Jones, A. Mendoza and S. M. Mendoza in the amount of eleven hours (11') each at overtime rate account not being called to perform wrecking service on January 22, 1981, Harlingen, Texas.

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 employees 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.

A derailment of approximately six cars occurred on January 22, 1981 at Harlingen, Texas. The Carrier called three Carmen from Victoria to work on the derailment. The Carrier also engaged an outside contractor. The contractor provided two side boom dozers and two machine operators, two truck drivers, and two groundmen.

The Organization argues that the Carrier should have summoned three additional Carmen from the Houston wrecking crew, based on applicable rules and agreements. In particular relevance are the Memorandum of Agreement and Letter of Understanding dated May 31, 1979, which read in pertinent part as follows:

"Article VII of the National Mediation Agreement Case A-9699 of December 4, 1975 reads in part, 'The number of employees assigned to the Carrier's wrecking crew for the purposes of this rule will be the number assigned as of the date of this agreement'.

For the purpose of that agreement the number of groundmen assigned to the Carrier's wrecking crew will be six (6) carmen each at Houston, Texas, San Antonio, Texas and Lafayette, Louisiana...

(Letter of Understanding)

In conference today I advised you and Mr. Smith that in line with Article VII, Wrecking Service, of Mediation Agreement, Case A-9699, that the Carrier, in compliance with that agreement, will call not less than six groundmen who are available and reasonably accessible when equipment of a contractor, with or without forces, is called for the performance of wrecking service in the area where the Houston, San Antonio and Lafayette wrecking equipment would normally be used. We agreed that six groundmen would not necessarily be all from Houston, San Antonio or Lafayette. As an example, to clear a derailment near Victoria, the number of carmen that can be made available and reasonably accessible from Victoria will be called, and the carmen assigned to the Houston wrecking crew will then be called to fill out the six (6) the number of groundmen required because of that number being assigned as groundmen at Houston as of the date Mediation Agreement, Case A-9699, was signed, which was December 4, 1975.

We also understood at that conference that when contractors' equipment is not called, the Carrier's relief outfit (wrecking equipment) is not called, Carrier is not restricted as to the number of carmen called to perform wrecking or rerailling service."

The Carrier claims that Houston wrecking crew members would not "normally" be used for a wreck in Harlingen, which is more than 250 miles from Houston. The Carrier notes that the Letter of Understanding refers to use of no less than six groundmen who are "reasonably accessible".

Neither the Organization nor the Carrier offer on the record any indication of where, by practice, Houston wrecking crew members are "normally" used or not used. The Board must be guided, therefore, by the example provided in the Letter of Understanding, which states: "...to clear a derailment near Victoria, the number of carmen that can be made available and reasonably accessible from Victoria will be called, and the carmen assigned to the Houston wrecking crew will then be called to fill out to six the number of groundmen required...".

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Whether Victoria is "near" Harlingen is a matter of judgment. The Board finds, nevertheless, that the claim appears to meet the intent of the 1979 Memorandum of Agreement and Letter of Understanding. The claim will be sustained, however, at the straight time rate of pay, in keeping with monetary awards for work not performed.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1985.