

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rules 119 and 120, September 19, 1981 at Freeport, Texas when they used outside contractors' forces to rerail freight cars within the yard limits.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman C. T. Parker, L. D. Muse, M. D. Spears and F. Aquirre in the amount of seven (7) hours at the punitive (sic) rate.

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.

Claimants, C. T. Parker, L. D. Muse, M. D. Spears, and F. Aquirre, are all Carmen employed by the Carrier at its Freeport, Texas, Train Yard and Repair Facility.

On September 19, 1981, Carrier experienced a derailment within the yard limits of its Freeport, Texas, facility involving four cars. The Carrier hired an outside contractor with two side booms and six groundmen to perform the work necessary to rerail the cars.

The Organization contends that by utilizing the outside contractor on the derailment within the yard limits, the Carrier violated Rules 119 and 120 of the Agreement.

Rule 119 states:

- "(a) Regularly assigned wrecking crews will be composed of carmen and helpers, where sufficient men are available, and will be paid for such service under Rule 7, except that the proper officer may select wrecking engineers from any class of mechanics in service giving preference to mechanics employed as carmen. Meals and lodging will be provided by the Company while crews are on duty in wrecking service.
- (b) When needed men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification."

Rule 120 states:

"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 and helpers will be called to perform the work, if available."

The Organization contends that the four Claimants each are due seven hours of pay at time and one-half since the Carrier did not use all of its own ground forces to work with the subcontractor.

The Carrier argues that on September 19, 1981, the rerailing operation began on the four freight cars that had been derailed earlier. Carrier states that there is no wrecking derrick nor a wrecking crew assigned to Freeport. Consequently, Carrier argues that it engaged a contractor for his equipment and personnel.

Moreover, Carrier contends that two Carmen at Freeport were used to perform all of the Carmen's work that was necessary at the derailment site.

Carrier contends that although the Organization has claimed that the subcontractor performed Carmen's work, there has been no proof or specification as to what the contractor's groundmen did or that Carmen were needed or could have done the work. Since the burden of proving entitlement is on the Organization, argues the Carrier, the claim must be denied.

Finally, Carrier argues that the Carmen do not have an exclusive right to the work in question (Awards 2343, 2408), and Carrier retains all managerial rights that are not limited by the Agreement.

This Board has reviewed all of the evidence and arguments in this case, and it finds that there is no evidence that the Carrier has violated any aspect of the Agreement. There is no question that an outside contractor was brought in to work on a yard derailment, but there is no evidence of the type of work that was performed. It is clear that two Carmen were used to perform Carmen work, but there is no evidence in this record whether or not there was a need for other Carmen. The mere presence of groundmen from the outside is not sufficient to support a violation of Rules 119 and 120. The Petitioner, in this case the Organization, must meet its burden of proof. We cannot determine from the record if two was an insufficient number of Carmen to utilize in this case.

In Award 8009, we faced a similar dispute between the same parties. In that case, we held:

"The Employes conceded that Carrier had the right to engage a contractor to rerail Unit 1632, but that Carmen, as per Rule 120, should have performed the ground work. However, the record is silent as to the work role played by the contractor's three groundmen in rerailing Unit 1632. There were two on duty Carmen who were utilized. Had they not been used the complexion of the case would have changed.

Was two a sufficient number of carmen to use? We can't discern from this record...

...The Board cannot determine on this record whether a sufficient number of carmen were used. The mere presence of the contractor's groundmen does not stand as a basis for alleging violation of Rule 120. The burden to prove the case here rested with the Petitioner. They failed.

Absent proof that more Carmen were needed the Board concludes that the number was sufficient and thus Carrier was not required to consider use of the Claimants herein. This claim will be denied."

Since not all work involved in rerailing cars after a derailment is exclusively Carmen work and we cannot determine from the record what was done by the outside contractor, we similarly must deny this claim. The Organization has the burden of proof in this case to prove the violation. It did not meet its burden.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy C. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1985.