

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  
(  
( Maine Central Railroad Company

Dispute: Claim of Employees:

1. That the Maine Central Railroad Company (hereinafter referred to as the Carrier) violated the provisions of the current Agreement and the December 4, 1975 Mediation Agreement, namely Article VII, Captioned: "Wrecking Service", on November 15 and 16, 1981, at the scene of a main-line derailment at Lewiston, Maine.
2. That accordingly, the Carrier be ordered to compensate the regularly assigned members of the Waterville, Maine wrecking crew, namely Carmen: E. J. King, Jr., E. O. Dickey, C. A. Hammonds, E. J. Laliberte, A. W. Sears, Jr., H. J. Barney, and C. R. Philbrick, (hereinafter referred to as the Claimants), at the applicable overtime rates of pay they would have received had they been dispatched to the scene of the derailment at Lewiston, Maine, on November 15 and 16, 1981, in compliance with the above cited Agreement.

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.

The Claimants are regularly assigned members of the Carrier's Waterville, Maine, wrecking crew. The Carrier maintains two other wrecking crews on its property. They are headquartered at South Portland and Bangor, Maine.

On November 13, 1981, a derailment occurred at South Gardiner, Maine. The Claimants were called to the scene to work on the derailment on November 14 and 15, 1981. The Hulcher Emergency Service, an outside contractor, was also called to assist the Carrier with the derailment.

At 3:22 p.m. on November 15, 1981, the Carrier had another derailment at Lewiston, Maine. Although both the Waterville wrecking crew and the Hulcher Company had completed their work on the Gardiner derailment on November 15, 1981, the Waterville relief train and its crew were sent back to their headquarters, and the Hulcher team was sent to the scene of the second derailment to assist a jacking crew sent by the Carrier.

The Organization's position is that the Carrier violated Article VII of the December 4, 1975, agreement when it called in an outside contractor, Hulcher Emergency Service, to perform wrecking work at Lewiston, Maine, on November 15, 1981, and failed to call the Claimants.

Article VII reads as follows:

"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 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.

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 Organization contends that the Waterville relief train crew should have been sent to Lewiston, Maine, to work with Hulcher in compliance with Article VII since that crew was available and reasonably accessible to the derailment. The Organization cites awards holding that once a Carrier calls an outside contractor to perform wrecking service, it is under contractual obligation, under Article VII, to call a sufficient number of its assigned wrecking crew to work with the contractor. The Organization contends that the "assigned wrecking crew" as referred to in Article VII is the relief train crew and not employees who may be sent out to rerail derailed cars with jacks, blocks, replacers, or other similar equipment.

For this alleged violation of Article VII, the Organization seeks compensation for the regularly assigned members of the Waterville wrecking crew at the applicable overtime rates of pay they would have received had they been sent to the Lewiston derailment on November 15 and 16, 1981.

The Carrier's position is that the use of Hulcher at the Lewiston derailment does not automatically require the presence and use of the wrecking crew. The Carrier contends that it complied with the requirements of Article VII of the agreement by utilizing "a sufficient number of Carrier's assigned crew" with an outside contractor by assigning the jacking crew to the Lewiston derailment.

Carrier further contends that it would have been ludicrous to send the Waterville wrecking crew to Lewiston, as they had been at the Gardiner derailment for two days and would not have arrived at Lewiston until the jacking crew and Hulcher had finished rerailling the cars.

After reviewing the record in this case, it is the opinion of this Board that Article VII requires that the Carrier assign a sufficient number of its wrecking crew employees when it retains an outside contractor to perform a wrecking service. In the instant case, the Carrier was required by the rule to assign its own wrecking crew since it had employed the Hulcher Company as a subcontractor.

Although the Carrier argues that the wrecking crew was not as accessible as the jacking crew, this Board finds that the Claimants were available and reasonably accessible, and the rule requires that they should have been called.

In previous awards of this Board, we have held that Article VII must be complied with by the carriers, and the carrier must utilize its own wrecking crew personnel when they are accessible. (See Second Division Awards 7837, 8064 and 8724).

The wrecking crew in this case was reasonably accessible since the Carrier sent the Hulcher Emergency Service to Lewiston, Maine to work on the derailment, and the Waterville relief train crew was available to proceed to the Lewiston derailment at the same time as the Hulcher Emergency Service. The Claimants had completed their wrecking work at Gardiner and had arrived home at 8:40 p.m. on November 15, 1981.

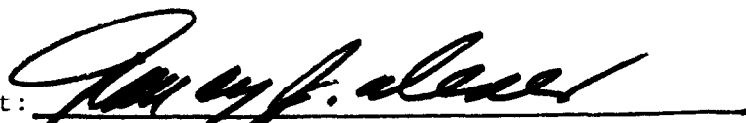
Consequently, this Board must sustain the claim and find that the Claimants are to be made whole by being paid at the overtime rate that would have been in effect in November 1981 for the work that was performed by the Hulcher Emergency Service between 8:40 p.m. on November 15, 1981, and 2:30 a.m. on November 16, 1981.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1985