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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10831
Docket No. 10398
2-CMSP&P-CM-'86

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company did violate the Wrecking Service Agreement dated August 8, 1977 when a contractor's equipment and six man crew were called and permitted to perform wrecking service in the Old Yard at St. Paul, Minnesota without calling an equal number of Carmen pursuant (sic) to the August 8, 1977 Wrecking service Agreement.

2. That accordingly, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate St. Paul Carmen E. Dobbs, W. Warner, R. John, R. Madsen, D. A. Johnson and H. A. Johnson in the amount of nine and one-half (9 1/2) hours' pay the time and one-half rate of pay for October 25, 1982.

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 Monday, October 25, 1982, a derailment occurred in the Old Yard at St. Paul, Minnesota. The St. Paul wrecking derrick and the assigned crew consisting of one cook, one engineer and four groundmen were called. A Contractor with several pieces of equipment and six groundmen was also called. This dispute arises from the different interpretations placed by the parties on the Wrecking Service Agreement entered into by the parties on August 8, 1977, which, in pertinent part, states:

"(a) Wrecking crews, including wrecking derrick operator, shall be composed of regularly assigned qualified Carmen and will be paid as per Schedule Rule 10. Wrecking derrick operator shall receive the operator's rate of pay while acting in such capacity. The regularly assigned crew shall consist of the same number of men assigned as of December 5, 1975.

(b) When the wrecking derrick outfit is ordered for service at a wreck or derailment outside yard limits, a sufficient number of the regularly assigned wrecking crew will be used. It will not be necessary for all or any portion of the regular wrecking crew to accompany the outfit to the scene of the wreck or derailment and/or return if other suitable means of transportation is available and desired by management.

(c) When the Carrier utilizes the equipment of a contractor (with or without forces) for the performance of wrecking or rerailment service, a sufficient number of qualified Carmen from the nearest point to the scene of the wreck or derailment will be used as follows:

(1) If a regularly assigned wrecking crew is located at a point nearest to the scene of the wreck or derailment, a sufficient number of the regularly assigned wrecking crew will be called to work with the contractor. For every groundman employed and used by the contractor, the Carrier will call and use an equal number of regularly assigned crew. If after the Carrier has assigned all of its regularly assigned wrecking crew members, groundmen are still needed, Carmen from the nearest point, if reasonably accessible to the wreck or derailment, will be called and used, if available, consistent with requirements of service at such point. If additional groundmen are still needed, then the contractor is permitted to supplement the forces with additional groundmen in his employ. If regularly assigned wrecking crew members from the nearest point are not available, other Carmen from that or other points may be used in place of the regularly assigned wrecking crew."

In essence, the Organization contends the Carrier complied with Subsection (b) above, but failed to comply with Subsection (c) and did not call Carmen from the nearest point to work with the Contractor. The Carrier argues the Wrecking Service language cannot be interpreted to mean the wrecking crew must physically work hand in hand with the Contractor. The Carrier further argues the only requirement under the Agreement is that for every groundmen used by the Contractor, it will call and use an equal number of Carmen from the regularly assigned wrecking crew.

Citing the resolution of similar disputes under Article VII, of the 1975 National Agreement, the Carrier contends these Awards support its view that the St. Paul wrecking crew satisfied the Agreement language. Award 9127 cites Article VII of the December 4, 1975, Agreement, in pertinent part, 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 reasonable accessible members of the assigned wrecking crew are called. The number of employees assigned to the carrier's wrecking crew for purposes of this rule will be the number assigned as of the date of this Agreement."

We note that in Award 8697 which dealt with the calling of a Contractor as well as the Carrier's own wrecking crew, the Board made reference to Second Division Award 8106 and quoted in pertinent part:

"Article VII sets down several conditions for the use of a Carrier's wreck crew when the carrier uses a contractor's equipment: 1) 'a sufficient number for the Carrier's assigned wrecking crew, if reasonably accessible to the wreck will be called ... to work with the contractor'; 2) The Carrier's assigned wrecking crew will be called with or without the Carrier's wrecking equipment and its operators'; and 3) the Contractor's ground forces will not be used, however, unless all available and reasonably accessible members of the assigned wrecking crew are called'."

Referring to these terms, the Board, in Award 8697, stated:

"In considering the contentions of the parties as they related to the merits, it must be said that it seems initially that Award 8106 is dispositive of the issue. Award 8106 is accurate in its interpretation of Article VII that only one wreck crew be assigned when a Carrier utilizes outside forces in a derailment and when two crews are reasonably accessible. Further, it is seen as applicable because the Organization's attempt to distinguish the instant case is without reasonable foundation. The Organization sought to establish a violation on the basis that the Hulcher crew did not work (with) Carrier forces. This attempt is strained in light of the facts. The Brunswick crew and the Hulcher crew, although they worked from different ends of the derailment worked the same derailment and at the same time."

In this case, we have almost identical circumstances. Nevertheless, the Organization argues that two separate and distinct wrecking calls were made. It further argues that had the Carrier not used its own wrecking derrick, the provisions of the Agreement would have been complied with. In essence, the Organization views Provisions (b) and (c) of the Wrecking Service Agreement as being mutually exclusive. Since the burden of proof rests with the party asserting a specific intention of an applicable rule, we must look to the Organization for proof of intention different from the plain meaning of the language involved. The Organization asserts the Wrecking Agreement reserves to the Carrier the exclusive right to work with the Contractor and its groundmen on a one to one basis. As evidenced by our reference to prior Awards, the term "with" has not been construed as narrowly as the Organization implies. Our examination of the applicable language leads us to the conclusion that this attempt to read into the Agreement a physical one to one presence is decidedly strained. On the contrary, our review of the Agreement fails to find support that this was the intention of the parties. The only provision dealing with the determination of how many groundmen are called by the Contractor requires the Carrier to call and use an equal number of the regularly assigned wrecking crew. The contention the wrecking crew members were not available ignores their physical presence at the derailment along with their equipment. The use of their own equipment does not negate their physical presence and availability at the derailment. It is our opinion the Organization has simply failed to prove the contested language was mutually intended to be applied in the manner asserted.

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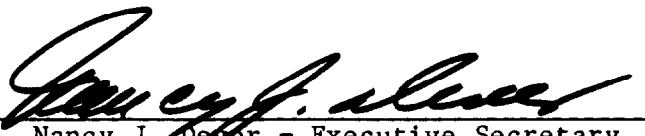
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1986.