

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

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

Dispute: Claim of Employees:

1. That the Burlington Northern Railroad violated the terms of the current agreement, particularly Rules 27(a), 83 and 86, when they retained M. L. Hulcher equipment and employees to complete wrecking service on July 02 and 03, 1981, and on July 08, 09, 10 and 11, 1981.
2. That accordingly, the Burlington Northern Railroad be ordered to additionally compensate Galesburg, Illinois Carmen W. G. Kerr, J. R. Wright, J. F. Borth, P. A. Johnson, R. L. Davis and R. W. Benson in the amount of twenty-five (25) hours pay each at the wrecking service rate of time and one-half (1 1/2) as claimed for service on July 02 and 03, 1981.
3. That accordingly, the Burlington Northern Railroad be ordered to additionally compensate Galesburg, Illinois Carmen R. L. Chambers, E. D. Guter, R. W. Day, R. L. Kunkle, A. L. Hayden and J. R. Riley sixty-nine (69) hours pay each at the wrecking service rate of time and one-half (1 1/2) as claimed for service on July 08, 09, 10 and 11, 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 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.

On July 2, 1981, 32 cars of a Burlington Northern train derailed at Wyanet, Illinois. On the same day, the Carrier called out its own Galesberg wrecking crew and also contracted with the Hulcher Company, an outside contractor, to work the wreck. Both crews participated in clearing the derailment on July 2 and 3, and worked together again from July 8 through July 11 in this same endeavor. The Hulcher Company was employed because, in the Carrier's opinion, the contractor possessed different equipment necessary to clear the wreck site. A Claim, in protest of Carrier's action, was timely filed and was handled on the property. The issue is properly before the Board.

Organization alleges a combined violation of Rules 27(a), 83, and 86. pertinent rules read inter alia:

"Rule 27(a):

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft..."

"Rule 83:

"Carmen's work shall consist of building, maintaining, dismantling, and all other work generally recognized as Carmen's work."

"Rule 86:

"(a) Wrecking crews, including derrick operators and firemen, will be composed of carmen who will be regularly assigned by bulletin and will be paid as per Rules 5 and 6.

"(b) when wrecking crews are called for wrecks or derailments outside of the yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within the yard limits, sufficient carmen will be called to perform the work".

Succinctly, the Organization claims that once the Carrier's wrecking crew is called, the wrecking work belongs exclusively to the Carrier's own Carmen. While disputing the appropriateness of several cited Adjustment Board Awards supporting Carrier's actions, the Organization cites Second Division Award No. 6030, wherein Referee Zumas held, among other issues, that once a Carrier's wrecking crew has been called and the Carrier's wrecking equipment has been used, the work then belongs to the Carmen's craft. Furthermore, Organization also points to Second Division Award No. 6257 which requires the Carrier to offer a reasonable explanation when it uses total strangers, like the Hulcher crew, in place of Carmen to perform such work.

The Carrier defends its actions in the instant dispute with an analysis of the pertinent rules thereby asserting that the Organization failed to point to specific language which exclusively reserves outside of yard wrecking work to the Carmen's craft. Furthermore, the Carrier also cites numerous Awards of this Division which hold, in essence, that mainline wrecking work is not exclusively reserved to members of the Carmen's craft so long as the Carrier's decision to use outside contractors was not made in an arbitrary or capricious manner.


The Board is persuaded that the Carrier's position herein correctly states Board precedent regarding the assignment of wrecking crew work such as that involved in the instant dispute. In this regard, Award No. 6030, which is critical to the Organization's theory in this dispute, pertains to a wreck which occurred within yard limits and to an Agreement on that property which did not draw a distinction, as the applicable Agreement does, between inside and outside of yard limit derailments. Award No. 6030, therefore, is not controlling in the instant case. Employees' Exhibit H, however shows that on July 23, 1982, the Carrier advised the Organization that Hulcher had been called because the outside contractor had proper off-track equipment which did not tie up rail traffic at the wreck site. In the opinion of the Board, the Carrier, therefore, properly informed the Organization of its reasonable decision to use Hulcher's crew and equipment in addition to the Carrier's own employees. Since the Carrier complied with both the schedule of Rules and Board precedent, the Claim, therefore, must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois this 23rd day of July 1986.