

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: (  
(Detroit and Mackinac Railway Company

Dispute: Claim of Employees:

1. That under the current agreement, the Detroit & Mackinac Railway Company violated Rules 7, 26, 27 Par. 1, 111, 114 and 115 of the Federated Shops Craft agreement of September 1, 1949 and Article 7, "Wrecking Service" as amended in the 1975 National Agreement. That, carmen Ralph Woods, Arnold Drumm and Edw. Trudell, assigned wrecking crew members were denied compensation of pay, when on September 23 and 24, 1983 the Detroit & Mackinac Railway Co. secured the services of an outside contractor, named Hulcher, with equipment, operators and groundmen to perform carmen's work in rerailling freight cars and clean up, at derailment site at M.P. 95 Harrisville, Mi. Therefore the Carrier failed to allow a sufficient number of the assigned crew to perform the ground work.

2. That accordingly, the Detroit & Mackinac Railway Company be ordered to pay each of the aforementioned carmen, nine (9) hours at straight time pay and 25 hours at time and one half at carmen's rate of pay, for lost (sic) of compensation of pay, for outside contractors employees performing the carmens work of hooking and unhooking cables, assembled trucks, loading of cars on flat cars and salvaging of car parts.

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 employed by the Carrier at its repair facility called the Tawas City Shop. On September 23, 1983, a derailment involving twenty-one (21) freight cars occurred at M.P. 95 Harrisville, Michigan. The Carrier made arrangements to use the Hulcher Company, an outside contractor, to perform all the work necessary to reraill the cars and clear up the derailment site. The Organization contends the Carrier violated the Agreement and, specifically, that the Carrier did not call a sufficient number of Carmen to work with the contractor. In its initial response to the Claim, the Carrier indicated it did not have an assigned wrecking crew and that a sufficient number of Carmen were called. The Organization subsequently responded and submitted to the Carrier a statement signed by seven Carmen attesting to the procedures and past practice applicable to derailments and wrecks. Also submitted was a hand written list of Carmen under the heading D&M Wrecking Crew signed by J. E. Daugherty on March 16, 1979.

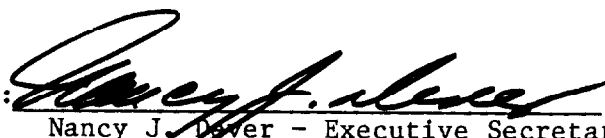
In its Submission, the Carrier, apparently, is able to rebut much of the Organization's position. This Board's problem with much of the Submission is that it contains information and arguments raised for the first time. On the property handling did not contain data relating to the hours for which specific Carmen were compensated. The asserted practice of Trainmen involved in rerailling was not raised previously nor was any claim that the handwritten, 1979 D&M Wrecking crew list raised by the Organization for the first time in this matter. Numerous additional, glaring on-the-property omissions abound, and we will not further clutter the record by specific reference.

As presented, we find the Organization has met its initial burden of proof, and the Carrier, by ignoring the assertions of the Organization, cannot, in its Submission, rectify such a substantial oversight.

A W A R D

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:   
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 27th day of August 1986.