

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

(Brotherhood Railway Carmen of the United States  
( and Canada  
Parties to Dispute: (  
(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 September 30 through October 1, 1980.

2. That accordingly, the Burlington Northern Railroad be ordered to additionally compensate Vancouver wrecking crew Carmen D. J. Washburn, W. H. Evans, E. S. Schulte, D. V. DeLong, R. E. Stewart and C. Hathaway in the amount of thirty-two (32) hours' pay each, at the wrecking service rate of time and one-half (1 1/2) as claimed for service on September 30, 1980 through October 1, 1980.

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 are members of Carrier's regularly assigned Vancouver, Washington, wrecking crew.

On September 16, 1980, seventeen (17) freight cars derailed near Woodland, Washington. In response, Carrier dispatched both its Vancouver and Seattle wreckers and crews, and also contracted for additional equipment and employes from M. L. Hulcher Company, an outside contractor.

After the main line had been cleared of damaged equipment and reopened to train traffic but before the needed wrecking work had been entirely completed, all three (3) wrecking outfits and crews were relieved from service and returned to their respective home stations. Carrier's Vancouver crew was released on September 18, 1980. Twelve (12) days later, on September 30, 1980, the rerailling of the remaining cars commenced using only the Seattle derrick crew and Hulcher's equipment and employees. This force worked for an additional fourteen (14) hours on the date in question.

Carrier contends that Hulcher's equipment was used both in the first and second phases of the disputed rerailling because the Contractor possessed off track equipment which could perform the rerailling more efficiently. Unneeded for the remaining work which recommenced on September 30, 1980, the Vancouver crew and derrick remained at their home point.

Organization contends that Carrier erred in the instant dispute by not calling the Vancouver wrecking crew on September 30, 1980, in order to complete the rerailling work. In support of this contention, Organization argues that Carrier's action violated Rule 27(a) - Assignment of Work, Rule 83 - Classification of Work, and Rule 86(b) - Wrecking Crews. The pertinent parts of said Rules, according to Organization, are as follows:

"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(b) -- When wrecking crews are called for wrecks or derailments outside of 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."

In an effort to support its basic theory that once a wrecking crew is called, all of the work involved in clearing the site belongs to the Carmen's craft, Organization cites a number of Second Division Awards which this Board finds to be inapplicable given the facts of the instant case as presented. Specifically, Award 1298 deals with a completely different wrecking Rule which was applicable to a particular factual situation which existed almost forty (40) years previously; Award 6845 recognized the right of the crew to "accompany" the derrick, and, in the instant case, the Seattle crew did perform this function; Award 6703 limited the reach of that decision ("... on this property") to the Illinois Central Railroad; and Award 6030 pertains to in yard wrecks -- a distinction of merit, since, in the instant case, we are dealing with a derailment which occurred outside of yard limits.


Carrier counters Organization's basic contention by citing numerous Board Awards which establish that absent any specific contractual language, wrecking work outside of yard limits does not belong exclusively to the Carmen's craft (emphasis added by Board). Moreover, Carrier also cites Second Division Award 8106 wherein it was held that, "Carrier was within its rights to use the independent contractor because the contractor could provide the off track equipment not available to the Carrier." This very same condition was in existence in the instant case and Organization has not offered any probative evidence whatsoever to disprove Carrier's assertion in this regard.

Finally, Carrier, citing Second Division Award 7979, correctly states Board precedent regarding the applicable test which is to be used in cases involving the assignment of wrecking crew work in situations similar to that involved herein. In that Award, Referee Cushman held that absent any specific contractual language which would otherwise limit Carrier's action, Organization can only successfully challenge Carrier's decision to use an outside contractor by proving that Management's decision "... was arbitrary, capricious, discriminatory or an abuse of managerial discretion...." Rule 86(b) referenced previously hereinabove only provides that Carrier's wrecking crew will accompany the derrick when called (emphasis added by Board). This Rule, even with a combined reading of Rules 27(a) and 83, does not grant wrecking work to the Carmen's craft in situations involving outside of yard limits derailments. Moreover, Carrier's decision to use the Hulcher Company's off track equipment was not shown by Organization to be an abuse of Managerial discretion; nor was it shown that Carrier violated any of the specific provisions of the applicable Collective Bargaining Agreement, or acted in an arbitrary, capricious or discriminatory manner.

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 10th day of September 1986.