Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10995
SECOND DIVISION Docket No. 10694
2-SOO-CM-'86

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

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

Dispute: Claim of Employes:

1. That under the current agreement, the Soo Line R.R. Co. is in violation of Rules 10, 27, 94, 98, when on January 18, 19, 20, 1983, the Soo Line R. R. Co. procured the services of an outside contractor's mobile crane and operator, to assist the Shoreham Shops assigned wreckcrew groundmen to clean up and load wreck cars from previous derailments at Bowlus and Genola, MN.

2. That accordingly, the Soo Line R.R. Co. be ordered to pay Carman W. Fish, Shoreham Shops assigned wrecker engineer, 24 hours straight time Carmen's rate of pay, for lost of compensated pay, for work that was performed by the outside contractors operator employee.

3. Also pay for 13 1/2 hours at time and one-half Carmen's rate of pay, to claim made by the assigned wrecking crew members, for 13 1/2 hours of waiting time in a separate claim working the same derailments in this dispute, as to their claim of being ordered to tie up at 5:30 P.M. after completing clean up and loading of wreck cars at Bowlus, MN. on January 19, 1983 and ordered to stay at the motel at Little Falls for the nite and ordered to wait and be ready to travel at 7:00 A.M. January 20, 1983 to another derailment site at Genola, MN.

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 Claimant is employed by the Carrier as a Carman at its Shoreham Shops, in Minneapolis, Minnesota. Derailments occurred at Bowlus on November 26, 1982 and at Genola on November 30, 1982. On January 18, 19 and 20, 1983, at Bowlus the Carrier utilized an outside Contractor with two (2) mobile cranes and one (1) front end loader and four (4) Shoreham Carmen as Ground Crew to load the wrecked car bodies onto flat cars and to clean up the site.

Claimant, William G. Fish, is by bulletin, the assigned Wrecker Engineer on the Shoreham Shops Wrecking Crew. He was called to the derailment, but refused to go because he would have to work as a Groundman.

When the assigned crew completed their assignment of clean up, tying down and blocking freight cars at Bowlus, they were ordered "to tie up at 5:30 P.M. on January 19, 1983" and they were lodged at Little Falls. They were then required to report to the next derailment site at Genola, at 7:00 A.M.

By procuring the services of an outside Contractor to assist the assigned Wreck Crew Groundmen to clean up and load wrecked cars at the derailment sites located at Bowlus and Genola, Minnesota, the Organization contends that the Carrier violated various Rules of the Agreement, among which are the following:

Rule 98, in relevant part, provides as follows:

> "* * 3. In case of emergency, should the Carrier use the equipment of a contractor, (with or without operators) a sufficient number of qualified carmen will be used as follows:
>
> (a) If a regularly assigned wrecking crew is located at a point nearest to the scene of the wreck, a sufficient number of the regularly assigned wrecking crew will be called to work with the contractor as groundmen. If, after the Carrier has assigned all its regularly assigned wrecking crew members and additional groundmen are needed, additional carmen from any location determined by the Carrier, will be called and used as additional groundmen.
>
> (b) If at the point nearest the scene of a wreck the Carrier does not have a regularly assigned wrecking crew, but has carmen employed, the Carrier may dispatch a sufficient number of qualified carmen from that point in lieu of calling a wrecking crew. If a sufficient number of carmen cannot be obtained for groundmen, consistent with service requirements, carmen from other points will be used.

* * * *

5. When the Carrier elects to call a contractor for any wreck, it is understood that the necessary wrecking crews and/or carmen, as nearly as possible, will be called so as to arrive at the wreck at about the same time as the contractor's crews.

* * * *"

After carefully examining the record, the Board concludes that before the terms of Rule 98, Paragraph 5 can be applied, there must be an emergency, as required in Rule 98, Paragraph 3. Paragraph 5 sets forth the understanding between the parties with regard to calling "the necessary wrecking crews and/or carmen" so that they will be able "to arrive at the wreck at about the same time as the contractor's crews" should the Carrier elect to call a Contractor. However, Paragraph 3 is contingent upon both the existence of an emergency and "should the Carrier use the equipment of a contractor." If the two (2) criteria are met, Paragraph 3 sets forth the manner in which a sufficient number of qualified Carmen will be used if the Carrier has a regularly assigned Wrecking Crew that is located at a point nearest to the scene of the wreck and where it does not have a regularly assigned Wrecking Crew at a point nearest the scene of the wreck.

The Carrier does not claim that an emergency existed on the various dates in January, 1983 when the clean up of the derailment occurred. Indeed the derailments which led to the clean up took place in November, 1982, two (2) months before the clean up took place. As a result it cannot reasonably be claimed that an emergency existed in January, 1983.

If the terms of Paragraph 5 were to govern the instant fact situation, it would render the terms of Paragraph 3 superfluous. The Board cannot conclude that the terms of Paragraph 3 contain an idle collection of words. Moreover, there is no support in the record for the Carrier to utilize the Contractor's equipment any time it desires without violating Rule 98, Paragraph 3 of the Agreement. Only when an emergency exists, can an outside Contractor be used under Paragraph 3. Thus, the Carrier violated Rule 98, Paragraph 1 by calling an outside Contractor on the dates in question. Rule 98, Paragraph 1 provides as follows:

"Wrecking crews will be composed of carmen, including Engineer, will be assigned by bulletin, and will be paid under Rule 10."

The next query raised is whether Claimant Fish's claim should be dismissed because although called to the wreck he refused to go because he would have performed the work of a Groundman, and not as a Wrecker Engineer. If Claimant Fish believed that he was entitled to perform work for which he was not called upon to perform, he should have protected the assignment and grieved later. As stated in Second Division Award No. 8395 which also involved Claimant Fish:

> "Mr. Fish was called twice to work, but refused, saying it was not his normal work. His proper response should have been to accept the call, and if he felt he had been improperly placed, grieve after the fact."

Accordingly, the Board is of the view that his Claim should be dismissed.

The final issue to be addressed is whether the time spent by the crew during the evening is waiting time as provided under Rule 10, Paragraph 5, relief time. Under Rule 10, Paragraph 5, waiting time is required to be paid "at rate of time and one-half." There is no Rule of the Agreement that prohibits the Carrier from relieving a Wrecker from duty for rest and allowing such Wrecker to go to bed while en route to the work location. In the judgment of the Board, the Claimants were relieved for the purpose of taking a rest after having worked 10.5 hours at Bowlus. As stated in Second Division Award No. 1991:

> "Part 2 of the claim is without merit. Rule 10 applies to wrecking service employees insofar as pay is concerned, except that such employees are entitled to pay at the time and one-half rate under certain conditions. The pertinent part of Rule 10 is that which permits the Carrier to relieve a man from duty and permits him to go to bed for five (5) or more hours. Such relief time is not to be paid for."

Thus on this aspect of the dispute between the parties, the Claim is dismissed.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1986.