

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Houston Belt and Terminal Railway Company

Dispute: Claim of Employees:

1. That the Houston Belt and Terminal Railway Company violated the agreement of December 4, 1975, Article VII, when they sent Carmen Don Clifton, Dan Searcy and Jerry Colomb home from a derailment on October 21, 1983 and utilized the services of an outside contractor with his employees to complete the rerailling operation.

2. That the Houston Belt and Terminal Railway Company be ordered to compensate Carmen D. Clifton, D. Searcy and J. Colomb in the amount of two (2) hours and fifty (50) minutes at the straight time rate.

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.

At the request of the Missouri Pacific Railroad, on October 21, 1983 at 8:00 A.M., Carrier dispatched its Wrecking Truck #309 and the Claimants to Jacintoport, Texas to reraill certain derailed cars under the control of the Missouri Pacific. The crew rerailled one car and the end of another when the Missouri Pacific Master Mechanic arrived and released the wrecking truck and the Claimants. The Missouri Pacific then called an outside contractor to complete the rerailling of the remaining cars. The contractor arrived at noon and completed the rerailling at 2:30 P.M. Claimants seek straight time pay for the time it took the contractor to complete the rerailling. The Carrier does not have exclusive contractual rights for rerailling cars on the Missouri Pacific and the Carrier's services are at the discretion of the Missouri Pacific.

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2-HB&T-CM-'86

The Organization claims a violation of Article VII of the Controlling Agreement. The Carrier contends that it was functioning as a contractor at the discretion of the Missouri Pacific.

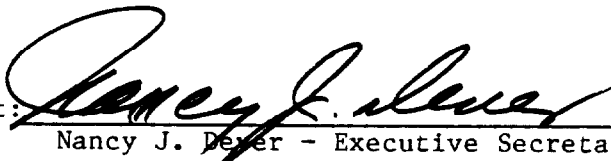
Based upon our review of the record, the Claim must be denied since we do not believe that the Organization has met its required burden in this case. Here, it is undisputed that on the date in question, the Carrier was functioning as a contractor for the Missouri Pacific. There is nothing in the record to show that, in this case, the Missouri Pacific could not release the Carrier as a contractor and have another contractor perform the rerailing services. Nor is there anything in the record to justify a claim that the Carrier's employees had contractual rights, in this case, to the Missouri Pacific's rerailing work.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1986.