Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11230
Docket No. 11041
2-MP-CM-'87

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

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

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated Rule 105 when they allowed Hulcher Emergency Service, Inc., outside contractor, to use four of their people to work with Carmen as groundmen February 13, 1984, to clear derailment of five (5) loaded cars.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen D. Chandler, E. Baker, R. Parmer and D. Overmann in the amount of four (4) hours' pay each at the time and one-half rate for this violation on February 13, 1984.

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.

On February 13, 1984, the Carrier utilized the services and equipment of an outside contractor to re-rail five cars and a caboose subsequent to a derailment in the Carrier's train yard and repair facility located at St. Louis, Missouri.

The Organization argued this is a violation of Rule 105, which reads as follows:

"Rule 105: When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, a sufficient number of carmen and helpers on duty will be used to perform the work. If a sufficient number of carmen and helpers are not on duty, a sufficient number of wrecking crew will be called, if available.

WRECKING SERVICE

1. When pursuant to rules or practices, a carrier utilizes the equipment of a contractor (with or without forces) for the performance of wrecking service, a sufficient number of the carrier's assigned wrecking crew, if reasonably accessible to the wreck, will be called (with or without the carrier's wrecking equipment and its operators) to work with the contractor. The contractor's ground forces will not be used, however, unless all available and reasonable accessible members of the assigned working crew are called. The number of employees assigned to the carrier's wrecking crew for purposes of this rule will be the number assigned as of the date of this Agreement.

NOTE: In determining whether the carrier's assigned wrecking crew is reasonably accessible to the wreck, it will be assumed that the groundmen of the wrecking crew are called at approximately the same time as the contractor is instructed to proceed to the work."

The Organization stated the above language requires that a sufficient number of Carmen be called under the circumstances of this case. Since four of the contractor's employees were utilized on this wreck, the Organization claims a violation of Rule 105.

The Carrier argued it did in fact supply a sufficient number of Carmen to perform Carmen's work. The Organization has not sustained its burden of proof to show that the Carrier did not work a sufficient number of Carmen, and the Rule cited does not support the Organization's contention that Carmen have the exclusive right to re-rail equipment.

Upon complete review of the evidence, the Board finds Rule 105 to be clear in its intent, and that is the Carrier is required to call sufficient numbers of Carmen to perform re-railing operations for "wrecks or derailments within yard limits . . . ." However, when the Organization makes the claim that sufficient Carmen were not called, it has the burden to demonstrate by a preponderance of the evidence that sufficient Carmen were not called. While the Board finds it unlikely that the four contractor employees simply stood around while the three Carrier Carmen performed all the work normally belonging to the Carmen's craft, the record does not contain any proof other than allegation and innuendo that Carmen's work was actually performed by those outside the Carmen's craft. Therefore, since the Organization has the burden and it did not meet its burden, the claim will be denied.

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 1st day of April 1987.