Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12137
SECOND DIVISION Docket No. 11994
91-2-90-2-152

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

1. That the Kansas City Southern Railway Company (Louisiana and Arkansas Railway Company) violated the controlling agreement, particularly Rule 75, when on May 17, 1989 outbound train #53 derailed two locomotives and twelve freight cars at mile post 606.1 and an outside contractor was called to do the rerailing, but no member of the Shreveport, Louisiana wrecking crew was called.

2. That accordingly, the Kansas City Southern Railway Company (Louisiana and Arkansas Railway Company) be ordered to compensate the following members of the Shreveport wrecking crew in the amount of twenty (20) hours each at time and one-half for this violation of Rule 75 of the agreement: Operator W. W. Walker, Assistant Operator T. L. Shofner and Groundman L. J. Dyson.

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 10:05 P.M. on May 17, 1989, train #53 derailed. Two locomotives and a number of cars derailed or were damaged. The incident occurred 52 miles from the Shreveport, Louisiana, shop, outside of yard limits. An outside contractor (Hulcher Emergency Service) was contacted and it arrived on the scene at 4:30 P.M. on May 18 and worked until May 20.

The Organization submitted a claim because none of the Claimants was sent to the scene in alleged violation of Rule 75 (e):

> "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 reasonable 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 force will not be used, however, unless all available and reasonably accessible members of the assigned wrecking 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 September 25, 1964."

The Carrier insists that its action was permitted by Rule 75(c):

> "When wrecking crews are called for wrecks or derailments outside yard limits, the regularly assigned crew will be used. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

and thus there is no mandate that the Carrier call the regular assigned wrecking crew or sufficient carmen when wrecks or derailments occur outside the yard limits, absent a clear contractual requirement.

The contractual language involved is not a model of clarity or the most artfully drawn statement of the intention of the parties. Obviously, wrecking crews may be called for work outside of yard limits, but the question remains as to whether the Carrier must call a wrecking crew. Numerous Awards have suggested that the cited language, standing alone does not require that result. See for example Second Division Awards 6218, 6259 (and Awards cited therein) and 10115. See also Award 13 of Public Law Board No. 3067.

The Organization argues that the cited Awards do not speak to the type of case here under review since this dispute deals with wrecking service.

To confuse the issue further, the factual assertions are somewhat confusing to us. For instance, the Organization seeks "... a total of twenty (20) hours for each man at the penalty rate of time and one-half" for three individuals. Yet, the original claim objected to the fact that the Carrier "...did not send one of our wrecking crew members...." (Underscoring supplied.) Moreover, we find the record totally silent as to whether the contractor brought or used any ground men. The Organization must meet its burden of proof. In Second Division Award 10376, the Board noted that an outside

contractor was brought in to work a derailment, but there was no evidence of the type of work that was performed. He concluded that since not all work involved in rerailing cars after a derailment is exclusively carmen work, the record must show the work that was done by the contractor. Accordingly, we will deny the claim for failure of proof.

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 18th day of September 1991.