

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(Norfolk Southern Railway Company
(Southern Railway Company)

STATEMENT OF CLAIM:

1. That under the current Agreement the Southern Railroad Company violated Article VII of the Wrecking Service Agreement dated December 4, 1975 when it failed to call Carmen H. L. Durham, E. Dawson, D. G. Woodall and L. J. Shipp, who were regular assigned members of the Macon, Georgia Wrecking Crew, on April 7, 1990 to a derailment near Arabi, Georgia.

2. That accordingly, the Southern Railroad Company now be ordered to pay the aforementioned Carmen eight (8) hours pay at the overtime rate due to this violation.

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 April 26, 1990 a claim was filed by the Local Chairman of the Organization at Macon, Georgia, with the Master Mechanic at that location on grounds that the Carrier violated Article VII of the Agreement of December 4, 1975. According to the claim, made on behalf of four Carmen, the Carrier had improperly called an outside contractor located at Tifton, Georgia to "clear up the derailment" of an adapter car on the main line near Arabi, Georgia after it had been derailed at approximately 6:30 A.M. on April 7, 1990 by the Norfolk Southern Triple Crown Service train. According to the claim:

"Article VII was violated when the Carrier's supervisors on duty at Macon Shop did not call any assigned Macon derrick groundmen, who are assigned to protect wrecking service work on the Macon Territory, to work with the contractor at this derailment, using equipment that would ordinarily require use of the Carrier's derrick. Dispatched from the Macon shop were (a General Foreman, a Car Foreman, and an additional Carman who) returned at approximately 2:30 PM.....Once Carrier calls an outside contractor to perform wrecking service work, it is contractually obligated to call a sufficient number of its assigned wrecking crew to work with the contractor...."

In responding to the claim the Carrier's Master Mechanic states that after the derailment occurred at 6:25 A.M. the derailed adapter car was rerailed by 10:25 A.M. and the mainline was totally cleared by 11:30 A.M. It took a total of 4 hours and 10 minutes to complete the rerailing, and 5 hours and 5 minutes to completely clear the tracks. According to the Master Mechanic, who denied the claim at this first level, Arabi, Georgia, is approximately 100 miles south of Macon but only 28 miles north of Tifton, Georgia, where the contractor had his equipment. The contractor arrived on the scene at 8:40 A.M. Other Carrier employees who were identified in the claim and who were on the scene, from Macon or its environs, were notified of the derailment as early as 7:10 A.M. (about the same time the contractor was notified) and the Master Mechanic himself was on the scene approximately 20 minutes after the contractor arrived. According to the calculations by the Master Mechanic, if the Macon derrick and crew had been called at the same time as all the others who were on the scene and who participated in the rerailment and track clearing, the Macon crew would not have even arrived on the scene of the accident until between 1:30 and 2:10 P.M., or from two to three hours after the track was totally cleared, or at least three hours after the actual rerailment had been accomplished. These calculations are based on a variety of considerations, including the fact that the Macon derrick's top speed is 25 MPH, that it would have taken 1 hour for call and prep time for the crew, another 1 and a half to two hours switching time at Macon and so on. Thus it was the conclusion of the Master Mechanic that the Macon derrick and crew were not reasonably accessible under the circumstances at bar. When handling the claim on appeal at higher level, the Carrier's officer informed the General Chairman of Organization that the contractor's forces were not utilized to clear the rerailment and that the total carmen work performed by the two supervisors and the one other carman consisted in making one hook with the contractor's crane, "...and pulling the front boggie from beneath the adapter car utilizing the rewheel truck" which consumed only about one hour's time.

The Rule at bar states in pertinent part:

"Article VII - Wrecking Crew

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 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 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 approximately the same time as the contractor is instructed to proceed to the work."

The issue before the Board is whether the wrecking crew, in this instance, was reasonably accessible. The record clearly shows that if the Carrier had called that crew that the tracks on the main line would not have been cleared until at least three hours after they were on the day of the derailment. Under such circumstances, the Board must conclude that the actions by the Carrier were not unreasonable and did not represent a violation of the Agreement. This conclusion is consistent with prior Awards by this Division dealing with similar circumstances. See Second Division Award 10881. The Organization cites also Awards from this Division which have sustained claims dealing with the calling of wrecking crews. After study of these Awards the Board must conclude that they deal with circumstances considerably different than those of the present case and are not factually parallel. For example, in Second Division Award 7744, the Board sustained a claim on grounds of reasonably accessibility because "the outside contractor's force was called from a point only a relatively few miles closer than the headquarters of...the wrecking crew...and in both instances highway transportation was or could have been used...." Such was not the case in the instant claim.

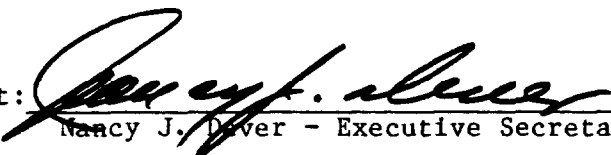
On basis of the record as a whole the Board must conclude that the Agreement has not been violated. The claim cannot be sustained.

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 29th day of April 1992.