Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12860
Docket No. 12455
95-2-91-2-266

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen - Division
(Transportation Communications International
(Union, AFL-CIO)
(
(Southern Railroad Company

STATEMENT OF CLAIM:

"1. That the Southern Railroad Company and/or its Corporate Parent, the Norfolk Southern Corporation, violated Article VII of the Wrecking Service Agreement dated December 4, 1975 when it relieved the four (4) extra assigned groundmen of the wrecking crew when assigned to a major derailment between Tuscaloosa and Moundville, Alabama on June 7, 1990; namely, Carmen D.W. Meadows, W.S. Ganus, D.D. Mann and D.S. Christopher.

2. That accordingly, the Southern Railroad Company and/or its Parent, the Norfolk Southern Corporation, be ordered to pay the following Carmen relief as stated: D.W. Meadows and D.S. Christopher fourteen (14) hours pay at overtime rate of time and one-half; W.S. Ganus and S.D. Mann five (5) hours pay at the overtime rate of time and one-half. This being the proper relief due to the work the named Claimants were deprived of by the Company."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 June 6 and 7, 1990, as a result of a derailment, all four (4) Claimants were called to assist two mobile cranes and ground forces. On the evening of June 7, 1990 the Birmingham Derrick and the two (2) Carmen were relieved; the Birmingham Derrick and the operator returned to the shop at Norris Yard; the Carrier then returned to call a wrecking service to clear the remaining derailments; the Carrier then relieved all four (4) of the Claimants in this claim after the Local Chairman had objected with the General Foreman upon learning that the contractor would be using eight (8) groundmen. After this action, the Claimants Local Chairman filed a claim on their behalf with the Master Mechanic.

The Organization contends that the Carrier stands in violation of **Article VII - Wrecking Service** of the December 4, 1975 Wrecking Service Agreement which states:

"**Article VII**

When pursuant to rules or practices, a carriers 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 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 states that it is undisputed that the Carrier had first determined that eight (8) groundmen would be the number of assigned crew members for this derailment and that it has been the past practice to use two (2) Carmen for each piece of equipment that the contractor uses; that the four (4) Claimants who were relieved and sent home should have been treated the same as the other members of the crew; and that this is especially true since the contractor used eight (8) groundmen and only four (4) Carmen were used. The Organization argues that the purpose of the Agreement was to assure that employees of the Carmen's Craft who hold regular assigned wrecking crew positions would be utilized in wrecking service under certain specified conditions such as have been met in this instance. The Organization further argues that as more than one wrecker service was utilized, the Carrier was obligated to call a crew containing a number of wrecking crew members sufficient to perform the wrecking service work. In support of its position, the Organization refers this Board to it decision in Second Division Award 9091. In that Award, this Board held that:

> "However, we conclude the requirements of Article VII are triggered each time the Carrier calls an outside contractor. Thus, when the Carrier calls a second contractor, it is obligated to call a second assigned wrecking crew provided the crew is reasonably accessible and the crew members are available. Maintaining a one to one ratio of contractors to assigned wrecking crews is the most reasonable and pragmatic interpretation of the Article VII language."

The Organization further states that when the extra groundmen were called to this derailment with the derrick, they became part of the regular assigned wrecking crew for all practical purposes in this claim.

The Organization concludes by stating that because of the Carrier's violation of the Agreement, as noted, the Claimants in this dispute are entitled to be made whole as per the Claim of the Employees.

The Carrier contends that the Agreement was not violated. It states that it called the derrick and the contractor's two mobile cranes to clear the mainline derailment; that it used all available and reasonably accessible members of the assigned wrecking crew at the derailment site as required by Article VII of the December 4, 1975 Agreement; that it then chose to send four additional Carmen to assist the derrick and cranes; and that the derrick, two mobile cranes and four additional Carmen were relieved upon the arrival of Hulcher Services.

In support of its position that the Agreement was not violated, the Carrier refers this Board to its decision in Award 12094 which stood for the proposition that since no rule or agreement requires that "additional carmen" are also required to work with a single contractor, there is no basis for this claim. The Carrier contends that the Organization failed to meet its burden of proof to show that such a past practice existed. The Carrier argues that since it elected to utilize more than the required employees to work the initial stages of a derailment, it is not required to operate under more restrictive conditions than that of the Agreement. The Carrier argues that if the Organization's position is sustained, it will result in the Carrier calling only the assigned work crew for derailment, thereby utilizing more of a contractor's ground forces and fewer Carrier employees who are member of this Organization. The Carrier states that it complied with all its contractual requirements because all available and reasonably assessable members of the assigned wreck crew were at the derailment location for the entire period of work. The Carrier states that by electing to call four additional Carmen along with the assigned wrecking crew to work with the derrick and a contractor's mobile cranes did not give the four additional Carmen any rights to the work as members of the Carrier's assigned wrecking crew. Finally, the Carrier states that it has unequivocally denied that it is a past practice of the Carrier to assign two Carmen to each piece of contractor's equipment working at the wreck site; and that the Organization has yet to supply any probative evidence in support of the alleged practice, thereby failing again to meet their required burden of proof.

This Board has held in Award 9091 that since Article VII contains no express or implied prohibition against the use of more than one outside contractor, the Carrier may, as it did here, call two contractors, However, the requirements of Article VII are triggered each time the Carrier calls an outside contractor thereby obliging it to call a second assigned wrecking crew provided the crew is reasonably accessible and the crew members are available. This Board holds now as it did then that maintaining a one to one ratio of contractors to assigned wrecking crews is the most reasonable and pragmatic interpretation of Article VII. Additionally, Rule 135 states that sufficient Carmen will be called to perform the work. Rule 135 specifically applies to the situation in this case. This Board adheres to its decision in Second Division Award 9138 where we stated that to permit the Carrier to go outside and hire whoever it chooses to supplement that crew and disregard the Carmen employed at the location, could render Rule 135 meaningless when carried to its ultimate conclusion.

In this case, the contractor utilized eight (8) groundmen for this operation and the only Carmen used were the four (4) regular assigned groundmen. As the Carrier failed to meet its obligation and assign a sufficient number of employees to work with the contractors, the Board finds that the Carrier is in violation of Article VII of the Agreement.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.