

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13901
Docket No. 13771
06-2-05-2-22

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 Division of TCU
(The Montana Rail Link, Inc.

STATEMENT OF CLAIM:

- “1. That the Montana Rail Link violated the terms of our current Agreement, in particular the Craft Specific Provisions for the Brotherhood Railway Carmen, Article VII(a) – Classification of Work, and Articles I and II and Exhibit A., paragraph C., of the Montana Rail Link Master Agreement, when the Carrier assigned strangers to the Agreement to perform scope work on or about March 8, 2004.
2. That, accordingly the Montana Rail Link (MRL) be ordered to compensate Laurel, Montana Carmen R. Hettinger, J. Van Doren, C. Shovar, and D. Dubell, eight (8) hours pay each at the applicable overtime rate for the March 8, 2004 violation, when the Carrier violated the controlling Agreement by assigning strangers to the agreement to perform Carmen’s work at the Billings, Montana train yard facility.”

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 were given due notice of hearing thereon.

The Claimants, R. Hettinger, J. VanDoren, C. Shovar, and D. Dubell, are Carmen assigned to the Laurel, Montana train yard facility of the Carrier. On Monday, March 8, 2004, three (3) freight yards were derailed in the Billings, Montana yard. The Carrier assigned the work of re-railing to a contractor.

The Organization argued that on the date in question the Claimants were available and qualified to perform the work claimed. The Claimants denied that it was necessary to move the cars to an appropriate track to complete the re-railing. The Carrier had equipment, manpower and expertise to perform this work claimed. The Carrier's road truck is equipped with frogging devices and hydraulic jacks and was available at the Laurel, Montana facility. Carmen have performed this work since the inception of the Carrier in 1987. The Carrier has the obligation to use reasonable efforts in engaging its employees for work covered by the Agreement. The Carrier failed to use reasonable efforts in this matter. The cars did not need to be lifted to move them to the stable rail. Other options were available. The record shows that the Carrier did not use reasonable efforts to utilize its own employees. Therefore, the Collective Bargaining Agreement was violated. The Carrier has an obligation to call Carmen from the nearest location to perform ground service with other than company owned equipment. The Carrier made no effort to do this. The Carrier said that the outside contractor requires the use of their own groundsmen when using their equipment. This, however, does not supersede the Collective Bargaining Agreement.

The Carrier argued that its wrecker crane would not have been able to get close enough to quickly re-rail the cars in question. Its road truck could not handle the job because the rail underneath the cars was damaged. The derailed cars were blocking the main line and time was of the essence. The outside contractor was able to re-rail the cars in a timely manner. The Organization bears the burden of proving this claim.

The Carrier did not violate any of the provisions of the Collective Bargaining Agreement. The outside contractor requires the use of its own ground service employees for safety and liability reasons. If the Carrier would have called its own employees, it would simply be paying its employees overtime to do nothing. That is not a reasonably feasible use of its work force. The Collective Bargaining Agreement in several areas grants rights to the Carrier to perform the work as it did in this matter. Whether the Carmen could perform the work or whether they have done so in the past does not prove that the Agreement was violated. The method that the Carmen would have used was much too slow when the mainline is blocked and the old yard lead is inaccessible. The method proposed by the Carmen would have been much more time consuming. The Carrier in this matter used its reasonable discretion in determining the proper way to resolve this situation.

Upon complete review of the evidence, the Board finds that the wording of the various clauses in the Labor Contracts shows that the Carrier must have some basis for its decision. This is not a unilateral right to provide work of this nature to an outside contractor just because the Carrier feels like doing so. The Carrier must have some showing. It cannot do as it pleases. Rules must have some meaning. The record shows, however, that the Organization did not put enough detail into this matter to show that they could perform the work in a safe and efficient manner. The Carrier did make an effort to utilize its own employees. The record shows that this is the first time that the Organization has challenged the Carrier in this manner. In the past the Parties have been able to work out their problems locally. This should have happened in this case, also. The Board finds that, in this specific instance, the Organization did not provide enough information in the record to prove its case and, therefore, the claim shall be denied. This case is distinguishable from Docket 13770 because this derailment was blocking the main line, and because of this, the Carrier was operating under an emergency situation and, therefore, had good reason to contract this matter out. Therefore, the claim shall be denied.

Claim denied in accordance with the Findings.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 7th day of July 2006.