

PUBLIC LAW BOARD NO. 6086

PARTIES TO THE DISPUTE:

TERMINAL RAILROAD ASSOCIATION
OF ST. LOUIS

- and -

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

STATEMENT OF CLAIM:

(1) The Carrier violated the Agreement when it assigned or otherwise allowed thirteen (13) employees of the Alton and Southern Railway Company, fourteen (14) employees of the Union Pacific Railroad Company and eight (8) employees of an outside contractor (Hulcher) to perform track maintenance work following a derailment at Valley Junction in East St. Louis, Illinois on January 8, 1994 (System File 1994-10/013-293-16).

(2) As a consequence of the violation referred to in Part (1) above, the below listed furloughed Claimants* shall each be compensated at their respective time and one-half rates of pay for all hours the foreign roads' and contractor's employees were paid on the claim date.

*L. Crouch	C. Perkins	R. Kurtz
D. Matthes	R. Stewart	R. Van
C. Jefferson	R. McCranie	M. McCann
J. Headrick	M. Hudson	D. Schindler
J. Pfeiffer	E. Myers	D. Bean
W. Green	C. Perry	J. Gatlin
L. Gates	A. McCarter	M. Kayser
R. Brown	J. Mason	M. Mitchell
C. Laden	T. Harris	A. Ramirez
S. Gray	C. Owens	W. Wiley
T. Allen	C. Wicks	

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COMPANY CASE NO.

OPINION OF BOARD: Sometime late in the evening of January 7, 1994 (according to Carrier) or early in the morning of January 8, 1994 (according to the Organization), a train operated by a Union Pacific (hereinafter referred to as ("UP")) crew derailed, dumping seven (7) loads of coal in the Valley Junction Interlocking Plant. It is not disputed that the derailment caused extensive damage to that portion of track where Alton & Southern Railroad (hereinafter referred to as "A&S") joins Carrier property. Consequently, the heavily trafficked Valley Junction Plant was rendered inoperable and placed out of service.

In addition to TRRA track forces, track maintenance employees of UP and A&S were utilized in making the necessary expedited repairs and restoring the track to service. Additionally, Carrier utilized Hulcher Wrecking Service to rerail the derailed equipment. The track restoration work took between eleven (11) and sixteen (16) hours to complete.

On February 24, 1994, the Organization submitted a claim on behalf of thirty-two (32) furloughed track employees, noted *supra*, each of whom had on file written indications of willingness to be called for extra or relief work under Rule 15 B of the Schedule Agreement. According to the General Chairman, Carrier allegedly violated Rules 1, 2, 3, 5 and 15B paragraph (c) of the Agreement when it did use thirteen (13) A&S employees, fourteen (14) UP employees, and eight (8) Hulcher Wrecking Service employees to participate in the derailment repairs, in lieu of calling Claimants to perform that work in extra service.

Carrier denied the claim, noting at the outset:

This is to advise that your initial claim alleging that Hulcher Operators somehow performed track work is completely erroneous. Hulcher was contracted to rerail the derailed equipment and performed absolutely no track work whatsoever.

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This is also to advise that, based on Mr. A. Ramirez's pending litigation, he is estopped from collecting any monetary penalty claims and is, therefore, an improper Claimant. You have also laid claim for thirty-two (32) employees while identifying only twenty-seven (27) employees from other railroads who allegedly performed work accruing to our Track Department employees. Therefore, five (5) employees for which you lay claim are also improper Claimants.

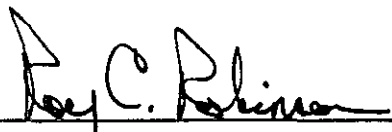
Finally, as a result of a serious derailment which caused extensive damage to both our tracks and the A&S tracks at a critical point where the respective tracks and properties join and connect with each other, it became necessary for the involved railroads to work jointly and in conjunction with each other in order to restore the tracks and resume operations. The UP Railroad is the primary user of the track which was damaged, and therefore, assisted in the repairs and restoration. It should also be noted that the UP Railroad owns a percentage of both us and the A&S so they were not trespassing on property not belonging to them.

In additional handling on the property, the Organization also asserted a violation of the Article IV notice and conference requirements while Carrier continued to defend both aspects of this dual basis claim on the ground of "emergency conditions". Based on the facts of this particular record, including the location and extent of the derailment damage, the need for expedition in effectuating the repairs, and utilization to the extent practicable of actively employed and available TRRA employees, we find no violation by Carrier of the Scope Rule or Rule 15B rights of the furloughed employees named as Claimants in the instant case. *See* NRAB Third Division Awards 12597, 15864 and 17795. *See also* PLB 1838, Award No. 1.

AWARD
Claim denied



Dana Edward Eischen, Chairman
Signed at Spencer, NY on August 26, 2000


Union Member

Company Member

8/31/00