

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

1. That the Carrier violated Rule 142 1/2 of the controlling agreement when they failed to call the Carrier's wrecking crew and used an outside contractor to do their work.

2. That the Carrier be made to compensate Claimants: W. J. Mason, C. E. Barr, H. W. Plum, R. L. See, H. W. Hobell, R. H. Schriver, L. O. White, J. L. Hartman, W. C. Emerick, C. R. Jack, M. S. Rice, Sr., T. C. Bishop, S. P. McKenzie, P. G. Molher, M. L. Robertson, and J. L. Campbell, Jr., for their violation of the controlling agreement Rule 142 1/2 and pay the Claim as presented under date of May 13, 1989 (88) hours.

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.

The Organization contends that Carrier violated Rule 142 1/2 of the Agreement, when Carrier utilized an outside contractor (Hulcher Emergency Service) at Blazer, West Virginia. Previously, the Cumberland Tool Cars (one of Carrier's assigned wrecking crews) was used to clear tracks at this situs on February 11 and 12, 1989 (derailment on February 11, 1989). There were 34 cars left to be disposed of at a later date. On April 3, 1989, according to the Organization, the Cumberland Tool Cars were called again to dispose of these remaining cars, but the call was cancelled and Hulcher was used instead to perform the work involving the loading of the damaged cars into gondolas and/or on trucks.

The Organization points out Rule 142 1/2 requires the utilization of an assigned wrecking crew whenever an outside contractor is used to perform wrecking service and thus Carrier was obligated to use the Cumberland Tool Cars to work with the outside contractor on the claimed dates, i.e., April 3 through 6, 1989, as it had done on February 11 and 12, 1989. Furthermore, it maintains Carrier never intended to use the assigned wrecking crew, since the work was not of an emergency nature.

Rule 142 1/2 reads:

"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 the number assigned as of the date of this Agreement."

Carrier contends the entire Cumberland crew was called on April 3, 1989, to continue the work at Blazer, West Virginia. However, Carrier observes only six of the sixteen assigned crew members accepted the assignment with the other ten members either declining the work or unavailable. It asserts that in view of this shortfall of the necessary employees to perform the work at Blazer, West Virginia, it decided to work the six crew members (Claimants herein) in the Cumberland Terminal to rerail five recently derailed cars. Moreover, it notes that it called the same sixteen crew members on April 4, 1989, to work near the Westvaco Corporation plant at Luke, Maryland, but only four crew members accepted the call. The rest either refused or were unavailable to work. In the Director of Labor Relations' March 19, 1990 denial letter Carrier affirmed the Mechanical Superintendent's June 19, 1989 denial, but added that since none of the Claimants suffered any loss of earnings for not being called to perform the disputed work, the Claim lacked merit. It also took exception to the Organization's Claim for punitive compensation.

In considering this case, the Board finds Carrier violated Rule 142 1/2 by not utilizing the assigned wreck crew to work with the outside contractor's forces on the claimed dates. Rule 142 1/2 is clear on such utilization.

Conversely, we agree with Carrier that since no evidence was submitted by the Organization showing Claimants suffered any loss of earnings as a result of not being called to perform this work, and since the type of work performed was not of an emergency nature, as the term emergency has been construed by this Board, there is no justification for awarding pay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1992.