

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13028
Docket No. 12959
96-2-94-2-114

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen Division -
(Transportation Communications
(International union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former
(Baltimore & Ohio Railroad Company)

STATEMENT OF CLAIM:

- "1. That the Carrier violated Rules 142, & 142 ½, on July 18, 1993, whenever it used Hulcher to perform rerailling activities, at Cumberland, Maryland without using any of its Carmen employees.
2. That the Carrier be ordered to pay, the Claimants listed below, the number of hours, at the Carmen's rate of pay, listed below:

<u>Claimant</u>	<u>No. of Hours</u>
F. L. Morris	18
G. R. Shafferman	18
J. P. Coffman	18
C. T. Merritt	18
C. E. Walbert	18
M. D. Robertson	18
W. C. Emerick	18
Smith	18
C. E. Knippenburg	18
J. S. Knippenburg	18
L. E. Dent	18
J. O. Friend	18
M. S. Rice	18
H. W. Hobell	18
K. W. Norris	18
M. A. Patterson	18"

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.

The Organization asserts that Carrier violated Rules 142 and 142 ½ when it used an outside contractor (Hulcher) on July 18, 1993 to reraill six cars at Cumberland, Maryland. It maintains that Hulcher utilized 16 employees for 18 hours to clear the derailment without calling the Carrier's regularly assigned Cumberland wreck crew. As the Cumberland wreck crew also numbers 16 and was not called for rerailling, the Organization asserts that the Carrier deprived the Claimants of Agreement protected work. The Organization requests compensation for the 16 most senior Carmen on the Cumberland Seniority Roster for 18 hours each, including overtime.

The Carrier disputes the Organization's claim that it violated the Agreement. It notes that under Rule 142 ½ the number of Carmen assigned to the wreck crew was 16, but that number had dwindled over the years to only two - a contract Supervisor and a groundman. It also argues that the wreck was within yard limits and therefore only sufficient Carmen needed to be called with no requirement to use the Cumberland wreck crew. The Carrier questions the bonafides of the Claimants on the grounds that they did not have regular positions on the Cumberland wreck crew. It further asserts that the listed Claimants were not only improper, but also that they lost no compensation and were not entitled to a penalty rate for time not worked.

Upon this record, the Board finds that Rule 142 ½ is not applicable to these instant facts. That Rule stipulates the Carrier's obligations with respect to its wrecking crew when it utilizes an outside contractor for wrecking service. However, Rule 142 ½ is independent of Rule 142 which states:

"When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient Carmen will be called to perform the work." (Emphasis added)

This Board finds Rule 142 ½ inapplicable due to the un rebutted Carrier assertion that the derailment was within yard limits. Accordingly, the Board holds that only the language of Rule 142 emphasized supra, has applicability.

In that regard, the Organization alleged by letter of September 17, 1993 that "sufficient Carmen were not called and the Carrier used an outside contractor and did not use any Carmen." The only Carrier response was that "eight Carmen were assigned to the yard at Cumberland and were working in the vicinity of the derailment." The Organization challenged the Carrier by asserting that its response "does not state that these eight Carmen were used in the rerailing operation with the outside contractor... [and]... cannot be accepted as indicative of Rule compliance." The Organization further challenged the Carrier to provide evidence that "any Carmen were used."

The Board finds no evidence of record that the Carrier complied with the Agreement. While the Carrier was not required to call the wrecking crew, it was obligated to call "sufficient Carmen." The evidence of record reveals that the Carrier called no Carmen to perform the work.

Having found a Rule violation the Board centered its attention on Part 2 of the Statement of Claim. Here, the Organization requests 288 hours total pay divided between the 16 Carmen having the greatest seniority on the Cumberland Seniority Roster. The Board can find no justification for such requested relief or for finding these Claimants proper. There is no showing that any of the Claimants lost work. This Board may not speculate on the number of "sufficient" Carmen who should have been called. The Organization provided no assertions or arguments in that regard. Therefore, Part 2 of the "Statement of Claim" must be denied.

AWARD

Claim sustained in accordance with the Findings.

ORDER

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 21st day of August 1996.