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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6495
Docket No. 6318
2-EL-CM-'73

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

Parties to Dispute: (System Federation No. 100, Railway Employees'
(Department, A. F. of L. - C.I. O.
((Carmen)
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(Erie Lackawanna Railway Company

Dispute: Claim of Employees:

That the Erie Lackawanna Railway Company compensate the eight (8) Regular Assigned Members of the Brier Hill Wrecking Crew located at Youngstown, Ohio.

James Fabian, J. Phillips, Cross Thomas, Amerigo Noday, Joseph La Guardia, J. Pastorie, A. Toth and Nich Tiberio claim five (5) hours pay at time and one-half, account not being called for wrecking service at Kent, Ohio, on August 13, 1970.

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 August 13, 1970, a derailment occurred at West Yard, Kent, Ohio located on Carrier's Kent Division. Carrier called carmen from Akron, Ohio (located on the Kent Division approximately eleven (11) miles from Kent) to re-rail the cars, and when it was determined that additional equipment would be required, an independent contractor, who had the required equipment available, was called to the derailment.

On October 9, 1970, claims were filed by eight (8) carmen assigned to the Brier Hill Wrecking Crew located on the Carrier's Mahoning Division approximately 47 miles from Kent, Ohio.

Claims were originally submitted based on a violation of rules 84 D, 84 E, 84 F, of the Collective Bargaining Agreement, as well as the September 25, 1964 Agreement, specifically Article I, section 2C and Article II, Section 1, paragraph 1.

The claim before this Board is based only on a violation of 84 E which reads as follows:

"When derailments or wrecks occur outside of yard or switching limits requiring assistance other than a wrecking derrick, a sufficient number of wrecking crew members will be called to assist."

We do not find that there is a fatal variance between the claim as originally submitted and the one now under consideration. The September 1964 Agreement cannot be considered by this Board since jurisdiction of grievances considered to be within its purview, has by mutual Agreement of the parties been Vested in the Special Board of Adjustment 570.

It is clear from a review of the factual situation in this record, that rule 84 E of the Collective Bargaining Agreement could not have been violated because the derailment occurred inside the yard and not outside. In order for 84 E to have been violated, the derailment would have had to occur outside the yard. Furthermore, the derailment occurred outside the seniority district of claimants. For the foregoing reasons, we will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May, 1973.