

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7042
Docket No. 6836
2-HBT-CM-'76

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

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
(Carman
(
(Houston Belt & Terminal Railway Company

Dispute: Claim of Employees:

1. That the Houston Belt & Terminal Railway Company violated the controlling agreement, particularly Rule 10, on November 14, 1973, when Carman R. A. Phillips was not called from the overtime board to assist in rerailing Santa Fe Engine 236-C, Collingsworth Street, Houston, Texas.
2. That accordingly, the Houston Belt & Terminal Railway Company be ordered to compensate Carman Phillips in the amount of three hours (3') at the punitive rate for November 14, 1973.

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.

Claimant R. A. Phillips is a Carman regularly assigned to Carrier's rip track at Houston, Texas with hours of service 7:00 a.m. to 3:20 p.m. Monday through Friday. Saturday and Sunday rest days. Phillips also is listed on the wrecker overtime board maintained by the parties by mutual arrangement pursuant to Rule 10 of the controlling Agreement which reads in pertinent part as follows:

"Rule 10

DISTRIBUTION OF OVERTIME

(a) When it becomes necessary for employees to work overtime, they shall not be laid off during regular working hours to equalize the time.

"(b) Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally.
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On claim date, November 14, 1974 Claimant was second out on the wrecker overtime board.

An engine derailment occurred on Carrier's property on November 14, 1974. The record shows that Carrier's regular wrecking crew and foreman were on another job and the Relief Wrecker Foreman was out of town on his rest day. Accordingly, it became necessary to call an Acting Wrecker Foreman to handle the engine derailment. Carrier called one John Qualls, a Carman who was not on the wrecker overtime list, and one Dan Searcy, the first-out man on the wrecker overtime list for the job. In effect, therefore, Carrier by-passed Claimant for the call. Qualls and Searcy rerailed the engine between 4:20 p.m. and 7:20 p.m. November 14, 1974 and were apparently paid 3 hours at the applicable overtime rate.

By letter dated January 7, 1974 the Organization filed the instant claim seeking 3 hours overtime for Phillips because of alleged violation of Rule 10 when he was not called on November 14, 1973. The initial **denial** letter of January 14, 1974 sets forth Carrier's position as presented on the property as follows:

"HB&T Wrecker #309 went to Bay City, date in question with the following men: F. Gradler, P. Garza and A.B. Starnes. Relief Wrecker Foreman R. McKinney was on his rest day and out of town.

Mr. D. Searcy was first out followed by **Mr. R.A. Phillips**. Both men have advised Mr. J.W. **Alvarez** they do not **wish** to be called as Wrecker Foreman, **therefore** it became necessary to have J.H. Qualls stand by as Wrecker Foreman.

When SF 236C was derailed at Collingsworth, Mr. Qualls was called. He inspected the derailment and notified the Diesel Shop asking Mr. Munger to call Mr. Searcy off the Wrecking Overtime Board. It was necessary we use the SP Cline Truck to rerailed this engine. I see no violation of the contract as both men were paid time and one-half for their services.

If Mr. Phillips wishes to exercise his rights as Emergency Wrecker Foreman when called for that position, I will be more than pleased.

Your time claim is respectively denied."

Additional evidence raised on the property includes a letter from Claimant as follows:

"I have advised no one that I did not want to be called as wrecker foreman. If that had been the case for an indefinite period I would advise them by a written statement so my name would not be placed on call.

In this case my name was on call. Mr. Qualls name is never on call and his name is not on the wrecking board which is used for these calls.

It is true that Mr. Searcy was first out and my name was second out. Two men worked this call, Mr. Searcy and Mr. Qualls. I contend that I should have been called as the second man and Mr. Searcy called as the first man.

Mr. Pettus makes a reference to me exercising my rights. I do wish to exercise my rights and not have my rights exercised by someone else as was done in this case. I wish to be called and if available I will accept call."

It is noted that Carrier presented for the first time in its ex parte submission a memorandum from one J. W. Alvarez relative to Claimant and Searcy purportedly waiving their right to be called off the wrecker overtime board. Not only do we find that latter document unpersuasive on the point for which it is offered but it comes too late at the Board level.

The relevant and probative record evidence shows that Claimant effectively was by-passed in favor of a Carman not on the overtime board. We do not find on this record a waiver by Claimant of his rights to a call for the Acting Wrecker Foreman opening on November 14, 1973. Nor are we persuaded on this record that Rule 114 regarding "wrecking engineers" relied upon by Carrier is supportive of its failure to call Claimant. We shall sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of April, 1976.