

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the provisions of the controlling Agreement were violated beginning with January 6, 1975 when the Carrier dispatched the Cowen Wreck outfit to Grafton, West Virginia without the regularly assigned crew.
2. That the provisions of the Agreement were violated when the Carrier substituted other employes for the regularly assigned crew on January 8 and January 9, 1975.
3. That accordingly the Carrier be ordered to compensate the following named regularly assigned crew members from Cowen, West Virginia as follows:

Wreckmaster C. C. Miller, Jr. - 37 hours' pay at the time and one-half rate.

Carman G. L. Bean, Jr., - 24 hours' pay at the time and one-half rate plus 21 hours' pay at double time rate.

Carman M. Sigman, - 40 hours' pay at time and one-half rate plus 13 hours' pay at double time rate.

Carman H. T. Bragg, - 24 hours' pay at time and one-half rate plus 13 hours' pay at double time rate.

Carman D. Greenleaf, - 24 hours' pay at time and one-half rate plus 13 hours' pay at double time rate.

Carman A. E. Morton, - 24 hours' pay at time and one-half rate plus 13 hours' pay at double time rate.

Carman J. G. Woods, - 24 hours' pay at time and one-half rate plus 13 hours' pay at double time rate.

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 employe 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 January 6, 1975, the Carrier ordered the Cowen, West Virginia wreck outfit to Grafton, West Virginia, a distance of 115 miles. The Carrier made this move because a major derailment in Mineral, Ohio required the service of the Grafton wreck outfit as well as the Cincinnati wreck outfit, and it was anticipated that the work at Mineral would take an extended period of time. The regularly assigned crane operator from Cowen accompanied the Cowen wreck outfit to Grafton. The regularly assigned Cowen wreck crew was not assigned to accompany the wreck outfit on the move to Grafton, West Virginia.

At 7:00 A.M. on January 8, 1975, the wreck outfit from Cowen was sent from Grafton to Parkersburg, West Virginia, where there was a derailment in the High Yard. The outfit was set aside for later use and from there was sent to Washington, West Virginia to reraill one car, utilizing the Cowen crane operator and the Benwood, West Virginia crew. The wreck outfit returned to Grafton at approximately 11:58 A.M. January 9, 1975. At 9:00 P.M. on January 9, 1975, the wreck outfit from Cowen was sent to Porter Falls, West Virginia to reraill a freight car. The crew for this service consisted of the Cowen crane operator and one car foreman and three carmen from Grafton -- the outfit and crew returned to Grafton at 6:30 P.M. on January 10, 1975. The Cowen outfit was returned to Cowen on January 11, 1975.

The Organization contends that the Wreckmaster and the entire crew from Cowen should have accompanied the wreck outfit for the period it was away from Cowen; and that the use of other than the Cowen crew during this period of time was also a violation of Rule 142 of the Agreement.

The Carrier contends that the Second Division does not have authority to decide the dispute involving Wreckmaster C. C. Miller, Jr.; that the Carrier may station its equipment as it deems necessary to efficiently and economically meet service requirements; that the Claimants were not entitled to the work involved; and that the claim is excessive.

The portion of the claim on behalf of Foreman C. C. Miller, Jr., who is the Wreckmaster of the Cowen outfit, is dismissed without prejudice because the Second Division of the National Railroad Adjustment Board does not have jurisdiction to decide a claim involving an employee holding a foreman's position. See Section 3 First (h) of the Railway Labor Act.

Rule 142 states in pertinent part:

"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...."

The Organization contends that on January 6, 1975 when the Cowen outfit was called, there was a "derailment" under Rule 142, that being in Mineral, Ohio. While the Grafton outfit and crew was being used at the Mineral derailment for January 6, 1975, which the Carrier felt necessitated the ordering of the Cowen outfit to Grafton, the Cowen outfit was not called for actual service at a wreck or derailment on January 6, 1975 but rather for stand-by service. We find then that no violation of Rule 142 occurred on January 6, 1975.

In Second Division Award 3365 involving the same parties, where the Grafton wreck outfit accompanied by the crane operator, wreckmaster, cook along with the regularly assigned Cowen wreck crew were used to rerail the derailed and overturned Cowen crane, the Board held that the Agreement was violated because the Carrier failed to call a sufficient number of the regularly assigned Grafton wrecking crew to accompany the Grafton outfit. The Board did not accept the contention that the Grafton crane was merely "borrowed". In a number of cases before this Board, we have consistently held that where a wreck outfit, accompanied by its operator, was used in wrecking service and a sufficient number of the regularly assigned crew was not allowed to accompany the outfit, the Agreement had been violated, notwithstanding contentions of the various carriers involved that the crane or derrick was loaned or transferred to another point. See Second Division Awards 3968, 4509, and 5492. See also Second Division Award 5003.

In the instant case we find that the Carrier violated Rule 142 of the Agreement when it sent out the Cowen outfit and regularly assigned Crane operator for wrecking service at 7:00 A.M. on January 8, 1975, and failed to have a sufficient number of the regularly assigned crew accompany the outfit. The mere fact that the Cowen outfit and the regularly assigned crane operator were located in Grafton when the assignment was made cannot serve to free the Carrier from its contractual obligation to call a sufficient number of the regularly assigned crew from Cowen when the Cowen outfit and crane operator were used in wrecking service. We find also that the Carrier violated Rule 142 of the Agreement when on January 9, 1975 at 9:00 P.M. the Carrier sent out the Cowen outfit and regularly assigned crane operator for wrecking service and failed to have a sufficient number of the regularly assigned crew accompany the outfit.

The determination as to the number of regularly assigned carmen that should have been allowed to accompany the Cowen outfit from Grafton on January 8, 1975, shall be determined by the number of men that actually worked with the Cowen outfit starting on January 8, 1975. In addition to the wreckmaster, six Carmen from the Benwood wreck crew worked with the Cowen outfit and crane operator starting on January 8, 1975. Thus all six of the Carmen Claimants are entitled to compensation. Since Rule 142 calls for the men to actually accompany the outfit, the men are entitled to be

paid from the time the outfit left Grafton for Parkersburg, until it returned at 11:58 A.M. on January 9, from Washington, West Virginia to Grafton. Additionally, the men are entitled to pay for travel time to Grafton from Cowen and return. The Claimants shall be awarded pay at the pro rata rate for these hours less the compensation received for the hours they actually worked during this period of time.

The determination of the compensation due for the wrecking service at Porter Falls shall be determined on the same basis as set forth above. Three Carmen from Grafton were utilized along with a foreman and the regular crane operator, thus the three Carmen from the Cowen outfit that would have been called for this service (to be determined by the Parties) are entitled to compensation from 9:00 P.M. January 9 to 6:30 P.M., January 10, 1975, plus travel time to Grafton from Cowen and return, less the hours they actually worked during this period of time at the pro rata rate.

A W A R D

The claim for Mr. C. C. Miller is dismissed without prejudice. The remaining claim is sustained as per Findings.

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 5th day of July, 1977.