

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. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That under the controlling Agreement, the provisions were violated on March 30, 1975 when the Carrier dispatched an insufficient crew with the Cowen Tool Cars to a derailment at Otter, West Virginia.
2. That the provisions of the Agreement were violated when the Carrier called other employees from Grafton, West Virginia to augment the Cowen Wreck Crew.
3. That accordingly, the Carrier be ordered to compensate Carman J. G. Woods, Cowen, West Virginia, who is regularly assigned to the Cowen Wreck Crew for seventeen hours and thirty minutes (17'30") pay at time and one-half rate and thirty minutes (30") pay at the 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.

At about 10:50 p.m. on the night of March 29, 1975, a car was derailed near Otter, West Virginia on Carrier's Monongah Division. Wreck equipment and crews are maintained both at Grafton, West Virginia and at Cowen, West Virginia on the Monongah Division. The record shows that those points are some 115 miles apart, but does not establish where Otter, West Virginia is located. Claimant is a regularly assigned Groundman on the Cowen Wreck Crew, serving as one of the four (4) regularly assigned Groundmen. It is not contended that either the Grafton or Cowen wreck crews have exclusive jurisdiction over work at Otter and, all things being equal, either could have

been called out initially. The gravamen of this claim, however, is that Claimant was entitled under Rule 142 to accompany the Cowen Wreck Crew when it was called to rerail the car at Otter.

The record shows that Carrier called out a Foreman and two (2) Groundmen from Grafton at approximately 11:30 p.m. on March 29, 1975; less than one hour after the derailment. The Car Supervisor initially asserted that these men drove the Grafton wreck truck with equipment to rerail the car using blocks, rerailers and a locomotive. When challenged on this point, Carrier conceded that the Grafton employees drove private automobiles to the site but asserted that their rerailing equipment was transported by other means. In any event, the record is clear that those employees did not attempt to rerail the car but rather were instructed by Carrier to stand by at the scene until the wreck crane from Cowen arrived. The Organization insists that this was part of a preordained plan to "augment" the Cowen crew with groundmen from Grafton rather than call out a "sufficient" number of groundmen from Cowen to accompany the crane. Carrier for its part insists that its intention was to use only the Grafton crew without a crane but that reappraisal of the situation forced a conclusion that the crane was essential, whereupon the Grafton crew was instructed to remain and assist since they were already at or near the site. Unfortunately, none of this is supported by solid direct evidence, but only by assertions and circumstantial evidence.

The Cowen wreck crane and tool cars were called out at 5:30 a.m. on March 30, 1975 with a crew consisting of a Wreckmaster, a Crane Operator, a Cook and two (2) Groundmen. Claimant and the other regular Groundmen were not called; but Claimant alone filed a claim of contract violation. The Cowen crew arrived at Otter approximately 10:00 a.m. and with the assistance of the men from Grafton rerailed the car, completing the job about 6:00 p.m. on March 30, 1975. The Cowen crew reported back to headquarters and was relieved at approximately 11:30 p.m. that night.

The claim in this case asserts that the foregoing establishes a violation of Rule 142, which reads as follows:

"Make-up Wrecking Crews.

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."

The focus of the dispute is the word "sufficient". Specifically Carrier asserts that two Groundmen were sufficient to do the rerailing of one car and it had no intention or obligation to send any more. The Organization maintains that if Carrier had not used the Grafton Groundmen to assist and augment the Cowen crew then two (2) Cowen Groundmen would not have been sufficient. As we view the record, including notably the shifting versions of the Car

Supervisor, we are persuaded that but for the presence and assistance of the Groundmen from Grafton two (2) Groundmen of Cowen would not have been sufficient to do the work. The evidence admittedly is circumstantial but we find it persuasive enough, particularly in light of precedent involving these same parties and contract provisions. Awards 3365 and 7307. See also Awards 857, 2185, 2404. As to the damages claimed we adhere to the principle enunciated in Award 3365.

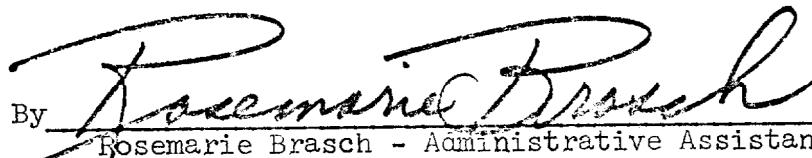
A W A R D

Claim sustained as indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of January, 1979.