

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 8446  
Docket No. 8288  
2-B&O-CM-'80

The Second Division consisted of the regular members and in addition Referee M. D. Lyden when award was rendered.

Parties to Dispute: { Brotherhood of Railway Carmen of the United  
States and Canada  
{ Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That under the controlling Agreement, the provisions were violated on the date of February 10, 1978, when the Carrier utilized the services of the Hulcher Emergency Service, an outside contractor, and ten (10) of their ground crew members to perform rerailling service at Little Tunnel Cut, West Virginia.
2. That accordingly, the Carrier be ordered to compensate the assigned crew on the Cumberland wreck outfit, being carmen Claimants L. B. Mathias, A. T. Rice, Jr., R. G. Hovatter, G. R. Shafferman, J. E. Burman and A. F. Hinkle for sixteen (16) hours', 15 minutes' pay each at time and one-half rate and four (4) hours' pay each at double time rate; P. H. Sibley, W. C. Shaffer, L. D. Saville and R. H. Schriver for twelve (12) hours', 15-minutes' pay each at time and one-half rate; H. E. Fraley and W. D. Rawnsley for eight (8) hours' pay each at double time rate, and E. F. Ellis for twelve (12) hours' pay at time and one-half rate and 15-minutes' pay at double time rate, account of violation of Article VII of the December 4, 1975 Agreement, wherein the Cumberland assigned wreck crew was available and reasonably accessible to this derailment and not called; thus placing the Carrier in violation of Article VII of the Wrecking Service Rule dated December 4, 1975 on February 10 and 11, 1978.

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.

The situation described in this case revolves around the desire on the part of the Cumberland Wreck crew to perform meaningful work, being critical of the carrier for utilizing outside contractor services in lieu of their own employees. Although a strong case could be made that the Carrier should utilize its own

employees prior to outside contractual parties, the question of contract interpretation still remains and the contract in this case is defined as stated below.

Article VII sets down several conditions for the use of a Carrier's wreck crew when the carrier uses a contractor's equipment: 1) "a sufficient number of the Carrier's assigned wrecking crew, if reasonably accessible to the wreck will be called ... to work with the contractor"; 2) "The Carrier's wrecking equipment and its operators"; and 3) "The contractor's ground forces will not be used, however, unless all available and reasonably accessible members of the assigned wrecking crew are called".

According to Article VII and Rule 96, the Carrier did comply with the contract when it called the Brunswick Wrecking Crew "The assigned wrecking crew, if reasonably accessible to the wreck". It is interpreted that the assigned wrecking crew means a crew in the singular and not in the plural, i.e., and not to all wrecking crews at all locations on Carrier's property where wrecking crews have been established and/or designated. This construction is borne out by the language of the NOTE to Article VII which also refers to wrecking crew in the singular.

Understanding the accessibility of the Cumberland Wreck Crew and their argument, the carrier did comply when it chose Brunswick Wrecking Crew.

Therefore, based on the testimony, documentation and in the case as a whole, the claim of the employees must be denied.

A W A R D

Claim of Employees is denied.

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 1st day of October, 1980.