

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

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

Dispute: Claim of Employees:

- No. 1. That under the controlling Agreement, the Carrier failed to call the Cumberland Wrecking Crew to a derailment of 26 cars at Garrett, Pennsylvania on the date of March 6, 1978, at which time the Carrier enlisted the services of the Penn Erection and Rigging Company and permitted them to perform work accruing to carmen of the Carriers assigned wrecking crew, in this instance, the Cumberland Wrecking Crew.
- No. 2. That the Carrier failed to comply with the rules of the controlling Agreement, specifically, Rule 29 and Article VII-Wrecking Service, of the December 4, 1975 Agreement, effective March 27, 1976, as well as Article V, Carriers' Proposal No. 7, effective November 1, 1954.
- No. 3. That accordingly the Carrier be ordered to compensate the following Claimants for their losses arising out of this incident; P. H. Sibley, seventeen (17) hours pay at time and one-half rate, H. E. Fraley, eleven (11) hours pay at time and one-half rate, L. B. Mathias, A. T. Rice Jr., R. H. Hovatter, W. C. Shaffer, G. R. Shafferman, L. D. Saville, J. E. Bierman, A. F. Hinkle, R. H. Schriver and W. D. Rawnsley, nine (9) hours pay each at time and one-half rate and E. F. Ellis, eight (8) hours pay at time and one-half rate and six (6) hours pay at doubletime rate.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carrier 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.

We must first dispose of the Organization's contention that Carrier violated the time limit provisions of Article V of the August 21, 1954 Agreement which provides, in relevant part:

"*** Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed,

"notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified the claim or grievance shall be allowed as presented, ***"

The Organization argues that Carrier exceeded the 60-day time limit in its responses to the initial claim and to the appeal of the Carrier's initial declination. The Organization asserts that Carrier must respond within 60 days from the date a claim is filed. Carrier, on the other hand, holds that its response is timely if issued within 60 days from the date the claim is received.

We find no violation of Article V inasmuch as the Board has found that the date of receipt of a claim determines the 60 day time limit.

The issue presented in the instant case is whether Carrier is required, when it employs an outside contractor for rerailling work, to call more than one assigned wrecking crew to perform ground work. In the case before us, Carrier used an outside contractor with four men as well as its own Connellsville assigned crew.

Claim was filed on behalf of 13 members of the Cumberland crew on the ground that they were available and based closer to the scene of the derailment than the Connellsville crew and, therefore, should have been called, which would have obviated the need to use the contractor's crew.

Petitioner contends that Carrier violated Article VII - Wrecking Services - of the December 4, 1975 Agreement, which reads in part:

"1. When pursuant to rules or practices, a carrier utilizes the equipment of a contractor (with or without forces) for the performance of wrecking service, a sufficient number of the Carrier's assigned wrecking crew, if reasonably accessible to the wreck, will be called (with or without the Carrier's wrecking equipment and its operators) to work with the contractor. The contractor's ground forces will not be used, however, unless all available and reasonably accessible members of the assigned wrecking crew are called. ***"

Petitioner argues that Article VII and Rule 142 of the Shop Crafts' Agreement pertain to the Carrier's assigned wrecking crew as a whole, regardless of their home point. Petitioner adds that the word "all" in Article VII embraces the entirety of reasonably accessible and available members of the wreck crew who must be called.

Carrier maintains that under the rules cited supra it is not required to call more than one regularly assigned crew to work with the contractor and that it complied with this requirement by utilizing the regularly assigned Connellsville crew; that the Cumberland crew has no exclusive right to exclusive performance of work at the scene of the derailment or at any other location; and that Article

VII refers to Carrier's crew in the singular. On this last point, Carrier cites Second Division Award 8106, which also involved Article VII. The Board in Award 8106 stated:

"In essence, therefore, we interpret the references in Article VII 'the Carrier's assigned wrecking crew', 'the assigned wrecking crew', and 'the Carrier wrecking crew' as a crew in the singular and not in the plural, i.e., a crew at a specific location on Carrier's property and not to all wrecking crews at all locations on Carrier's property where wrecking crews have been established and/or designated ***"

We concur in the findings and conclusions of Award 8106 and, accordingly, we find that Carrier in the instant case did not violate the Agreement and the claim is denied.

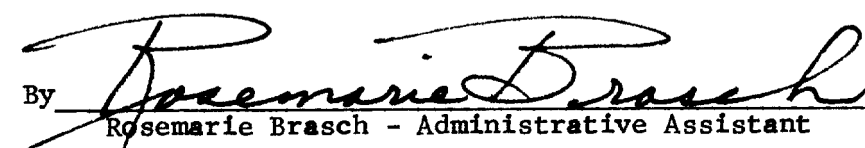
A W A R D

Claim 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 15th day of April, 1981.