

The Second Division consisted of the regular members and in addition Referee John B. LaRocco 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 Carrier violated the terms of the controlling Agreement, when, on the date of August 29, 1979 Carrier failed to call Carman J. H. Steward, J. L. Campbell, M. L. Nelson, G. L. Ritchie, relief members of the Cumberland assigned wrecking crew, to accompany the Cumberland Tool Cars to a derailment at Foley, Pennsylvania and utilized the services of an outside contractor, Hulcher Emergency Service, equipment, three operators, two foremen, and five groundmen, allowing them to perform not only wrecking service, but further allowing them to perform work of rebuilding trucks and securing trailers on flat cars, such work accruing specifically to Carmen by virtue of Rule 138 of the controlling Agreement, and in so allowing, places the Carrier in violation of Rule 29 of the controlling Agreement. Utilizing Hulcher forces at this derailment in lieu of Claimants further places Carrier in violation of Rule 142 of the controlling Agreement, as well as Article VII of the December 4, 1975 Agreement, and Rule 15.

No. 2. That accordingly, Carrier be ordered to compensate Claimants, J. G. Steward, J. L. Campbell, M. L. Nelson, and G. L. Ritchie, for their losses arising account this violation as follows: Carmen J. G. Steward, J. L. Campbell, M. L. Nelson and G. L. Ritchie, for fifteen (15) and one-half (1/2) hours' pay each, at the straight-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 August 29, 1979, the Carrier called an outside contractor and the Cumberland assigned wrecking crew to perform wrecking service at a derailment near Foley, Pennsylvania. The Cumberland wrecking crew consists of sixteen assigned members. Twelve of the sixteen members responded to the Carrier's call. Two members were unavailable due to illness and two members declined to work.

The Organization brings this claim on behalf of four Carmen stationed at Cumberland contending the Carrier should have also called the Claimants to fill the places of the absent members of the assigned wrecking crew. To support its claim, the Organization cites Rules 141 and 142 of the working Agreement and Article VII of the December 4, 1975 Agreement. In essence, the Organization identifies the Claimants as relief members of the Cumberland assigned wrecking crew who are absolutely entitled to be called so that the maximum complement of employees actually work each time the crew is called. The Carrier disagrees with the label the Organization places on the Claimants contending they are not relief members of the assigned wrecking crew. In the alternative, even if Claimants are construed to be relief members of the crew, Carrier maintains that it satisfied all its contractual obligations when it called the regularly assigned members. According to the Carrier, the Organization has failed to point to any language in Article VII or Rules 141 and 142 which mandates that sixteen wrecking crew carmen actually accompany the outfit each time the crew is called. The Carrier acknowledges that it must call the sixteen regularly assigned members but asserts it need not call any relief workers when one or more of the regularly assigned members declines to work or is otherwise absent.

Also, the Carrier contends the instant claim should be dismissed because of an alleged procedural defect. At one step of the appeal, the Organization inadvertently requested that the Claimants be compensated at the overtime rate. However, this technical error was immediately corrected and the claim for straight time pay progressed to this Board matches the claim originally filed on the property.

Turning to the merits, this Board recently considered a similar dispute between these same parties. Second Division Award No. 8679 (Weiss). In Award No. 8679 we ruled that there is "... no requirement that the Carrier must call members of the relief crew when any of the designated members of the 'assigned wrecking crew' are not available or do not make themselves available when called for wrecking service." We also interpreted the Carrier's obligation under Article VII as follows:

"Article VII refers to 'the Carrier's assigned wrecking crew'; i.e., named employees. Carrier's obligation is to call all such assigned wrecking crew members who are 'available and reasonably accessible' before using a contractor's ground forces. Such obligation, in our view, does not extend to relief wrecking crew carmen, inasmuch as they are not designated, under the Agreement as members of 'Carrier's assigned wrecking crew.'"

Since the Carrier called all available and reasonably accessible designated members of the Cumberland crew on August 29, 1979, the Carrier complied with Article VII. Accordingly, for the reasons more fully explained in Award No. 8679, we deny this claim.

We note that the parties, in this record, presented extensive arguments regarding the alleged existence of vacancies on the Cumberland assigned wrecking crew as well as an alleged duty of the Carrier to bulletin any such vacancies.

These issues are outside the scope of the Organization's statement of the claim either on the property or before this Board. We have not addressed these issues and we make no finding on the merits, if any, of either party's argument. Our decision should not be construed as an endorsement of either party's position on these collateral issues.

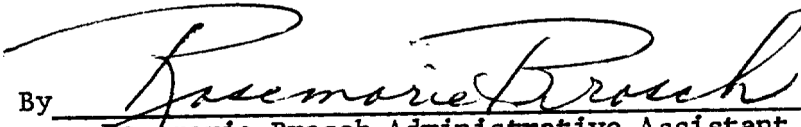
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch-Administrative Assistant

Dated at Chicago, Illinois, this 19th day of May, 1982.

