

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 is in violation of the controlling Agreement, such violation flagrantly violating the contractual rights of Claimants herein, whereas Carrier has repeatedly refused to bulletin vacant turns of the Cumberland assigned wrecking crew, such vacancies occurring after the effective date of the December 4, 1975 Agreement, as a result of illness, death, retirement, etc., some such vacancies existing for a period of over two (2) years, placing the Carrier in violation of Rule 15 of the Shop Crafts' Agreement, and Article VII of the December 4, 1975 Agreement.
- No. 2. That Carrier is in violation of the time limits rule, Article V, of the controlling Agreement, effective January 1, 1955.
- No. 3. That Carrier be ordered to adhere to the provisions of Rule 15 and the December 4, 1975 Agreement, Article VII, and to immediately bulletin the vacancies existing on the Cumberland assigned wrecking crew, that have transpired since the effective date of the December 4, 1975 Agreement.

### 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 Organization argues that the Carrier has repeatedly violated Article VII of the December 4, 1975 Agreement when it refused to bulletin and fill alleged vacancies on the Cumberland assigned wrecking crew. According to the Organization, the Carrier has impermissibly allowed four of the sixteen assigned positions on the crew to remain vacant for a period of two years.

The Carrier contends all sixteen positions are assigned and so no vacancies exist. Also, the Carrier asserts that though some of the assigned crew members are ill or refuse to work when called, these workers still retain their position.

We note from the evidence presented in the record that, in 1980 and 1981 (subsequent to the filing of this claim), the Carrier did bulletin and award several positions on the Cumberland assigned wrecking crew after one member had died and two others had resigned their positions. Currently, all sixteen positions on the Cumberland assigned wrecking crew are held by carmen engaged in active service. These subsequent events render this claim moot. The claim, in its present posture is no longer a viable controversy. See Second Division Awards No. 6143 (McGovern) and 8394 (Scearce).

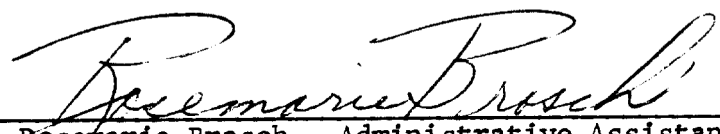
The Organization also contends that the Carrier did not timely deny its appeal of this claim to the Manager of Labor Relations within the limits set forth in Article V of the January 1, 1955 Agreement. Though the record discloses that the Carrier did not timely deny the appeal, we cannot sustain the claim because the subsequent filling of positions on the Cumberland crew has rendered the underlying claim moot.

A W A R D

Claim dismissed.

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 16th day of June, 1982.