

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
(
(Boston and Maine Corporation, Debtor

Dispute: Claim of Employees:

1. That the Boston and Maine Corp. (hereinafter referred to as the Carrier) violated the provisions of the current Agreement, namely Rules 112 and 113 thereof on August 7 and 8, 1979, when the regularly assigned crew was not allowed to accompany the outfit.
2. That accordingly, the Carrier be ordered to additionally compensate the following regularly assigned members of the East Deerfield wrecking crew (hereinafter referred to as the Claimants) as follows: Carmen: F. E. Holden, also Derrick Engineer, W. E. Godfrey, R. H. Heselton, J. D. Hartnett, J. E. Sabine and A. P. Hanrahan, eight (8) hours at the time and one-half rate and twenty (20) hours at the double time rate because of violations.

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.

To fully understand the issue presented in this case, we must relate the uncontested facts in some detail. On August 2, 1979, at 3:00 a.m., the regularly assigned members of the East Deerfield, Massachusetts wrecking crew were called to clear a derailment outside of yard limits. The wrecking crew accompanied the wrecking outfit to the derailment site at Chicopee, Massachusetts. By 3:00 p.m., the crew had cleared the northbound main line. The crew was transported north by bus to East Deerfield while the wrecking outfit was moved south to Springfield, Massachusetts. At 7:00 a.m. the next morning, the regularly assigned East Deerfield wrecking crew was transported (by bus) back to the Chicopee derailment site. At precisely the same time, the wrecking outfit departed Springfield and later arrived at the derailment site. After working all day, the crew cleared the southbound main line and both the crew and the wrecking equipment independently returned to East Deerfield. Though the main line tracks had been cleared, much of the debris and equipment remained on a river bank adjacent to the derailment site. The Organization did not file a claim arising out of the events of August 2 and 3, 1979.

On August 7, 1979 at 3:00 p.m., the wrecking outfit departed from East Deerfield via a regular train and the outfit was left overnight at Springfield. At precisely 7:00 a.m. on August 8, 1979, the regularly assigned wrecking crew left East Deerfield (by bus) for the Chicopee derailment site while the wrecking outfit simultaneously departed Springfield for the derailment site. During August 8 and 9, 1979, the crew cleaned up the remaining damaged train equipment on the river bank next to the derailment site.

The Organization initiated a claim alleging that Claimants, regularly assigned members of the East Deerfield wrecking crew, should have been called to accompany the wrecking outfit at 3:00 p.m. on August 7, 1979.

Both parties agree that the instant dispute can be resolved by applying Rules 112 (c)(4) and 113 of the applicable Agreement. Rule 112 (c)(4) states:

"Carmen regularly assigned to wrecking crew will accompany the outfit outside yard limits (as provided for in Rule 113) unless otherwise agreed to between local supervisor and Local Committee."

Rule 113 states:

"When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For derailments or wrecks within yard limits, sufficient carmen will be called to perform the work."

NOTE: See Rule 112(c) paragraphs 4, 5 and 6."

The Organization argues that since the wrecking equipment departed East Deerfield at 3:00 p.m. on August 7, 1979, the above quoted rules mandate that the crew be called to accompany the outfit regardless of whether or not the outfit is proceeding directly to the derailment site. The Organization claims the outfit was moved to Springfield for the purpose of performing wrecking service at Chicopee.

The Carrier characterizes the movement of the wrecking outfit on August 7, 1979 as the mere transfer of equipment devoid of any intent to utilize the outfit for wrecking service on that date. The Carrier contends the Claimants were properly compensated because both the crew and outfit departed from their respective locations at 7:00 a.m. on August 8, 1979 with a common destination i.e., the derailment site. Furthermore, the Carrier asserts the Organization impliedly recognizes this claim is without merit by reason of its failure to object to an analogous occurrence on August 3, 1979 when both the crew and outfit were simultaneously dispatched to the work site from East Deerfield and Springfield respectively.

The issue is whether the Claimants were entitled to be called to accompany the outfit when it left East Deerfield at 3:00 p.m. on August 7, 1979. In previous decisions involving disputes between these same parties, this Board has ruled that when wrecking equipment is moved for the specific purpose of performing wrecking services, the movement of the outfit to an intermediate location does not constitute the transfer of equipment. Second Division Awards No. 4832 (Johnson) and No. 5003 (Weston). The record in this case discloses that the Carrier transported the wrecking outfit from East Deerfield to Springfield on August 7, 1979 with the

express intention of utilizing the outfit for derailment work at Chicopee on August 8, 1979. Chicopee represented the outfit's ultimate destination. Since the outfit returned to East Deerfield after the river bank was cleared and since the outfit served no useful function at Springfield, the sole purpose for transporting the outfit to Springfield was to then use the outfit at Chicopee. Pursuant to Rules 112(c)(4) and 113, Claimants should have been permitted to physically accompany the outfit beginning at 3:00 p.m. on August 7, 1979. See Second Division Awards No. 3936 (Johnson); No. 4509 (McDonald); No. 5784 (McGovern) and No. 7664 (Scearce).

There is no evidence in the record that the Organization waived its right to assert this claim merely by acquiescing in the Carrier's decision to store the outfit overnight in Springfield on August 2 and 3, 1979. Claimants had been properly assigned to accompany the outfit to the derailment site on August 2, 1979.

The amount of compensation sought in the claim is excessive. Each Claimant is entitled to sixteen hours of pay at the straight time rate in effect on August 7, 1979.

A W A R D

Claim sustained to the extent consistent with our Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.