

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 9754  
Docket No. 8927-T  
2-CLINCH-FO-'84

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
( Clinchfield Railroad Company

Dispute: Claim of Employees:

1. That the Clinchfield Railroad Company violated the Controlling Agreement, particularly Rule 1 Scope, when wrecker car attendant, Laborer Buford Rogers, Erwin, Tennessee, was not called for wrecking service account of other employees used as wrecker attendant on the following dates: February 4, 1979; January 4, 1979; January 5, 1979 and February 9, 1979.

2. That accordingly the Clinchfield Railroad Company be ordered to compensate Laborer Buford Rogers in the amount of twenty-one and one-half (21 1/2) hours at punitive rate of pay for February 4, 1979; January 4, 1979; January 5, 1979 and February 9, 1979.

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 employees involved in this dispute are respectively carrier and employees 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 Brotherhood of Railway Carmen of the United States and Canada and the Brotherhood of Maintenance of Way Employees were notified of this claim as possible parties at interest but determined not to intervene.

The Organization processed a claim to this Board on behalf of Claimant Buford Rogers stating that he was improperly deprived of work as a wrecker car attendant on five dates in September-November 1977. This became the subject of Award No. 8270 (McMurray), which reads in full as follows:

"The claimant is a laborer working for the carrier at Erwin, Tennessee. At the time of the claim, he was working in an assignment awarded to him on November 20, 1975. His duties included cleaning, servicing, and supplying cabooses for Road Service. In addition to such position, he had another function stemming from a successful bid in 1958 to a position as Shop Laborer for wreck service. The latter service was an on-call service whenever the need arose. The carrier takes the position that the November 20, 1975, position which arose as a result of a job abolishment also discontinued his services on the wrecker assignment. The record indicates, however, that prior to this date Mr. Rogers had fulfilled both a job assignment and an on-call position to perform work on the wreck service. These dual responsibilities continued after the November 20, 1975, assignment up until the actions by the carrier which gave rise to the grievance under consideration.

From the record this Board concludes that the grievant, by past practice, is entitled to the same rights he held prior to the 1975 assignment. In so doing we rely upon that portion of the scope rule which reads:

'It is agreed that present assignments of work which have been in practice for a number of years will continue in effect unless changed by mutual agreement or in accordance with the Railway Labor Act.'

Neither party to this disagreement advances a clear record of past practice in the area under consideration. It is clear, however, that the grievant had been used in the position on numerous occasions and was entitled to some consideration. The record also indicates that laborers from other classes and crafts had been utilized on occasions when the need or emergency required such utilization. Consequently, we find that the organization has failed in its requirement of proof that past practice was violated in the assignments filled by other laborers. However, we admonish the carrier that absent any understanding as outlined in that portion of the scope rule quoted previously, it must adhere in a reasonable manner to the assignment of work as outlined by past practice.

Based on the entire record, this Board concludes that the utilization of supervisors and laborers from other carriers does not conform to normal past practice and the claimant should have been utilized on those assignments where such individual performed the work.

"A W A R D

Consistent with the findings the Claimant shall be awarded eighteen (18) hours of pay as claimed. These hours consist of eight (8) on September 10 worked by a supervisor and ten (10) hours on September 17 worked by employee of another carrier."

While this claim was being processed to resolution by the Board, five other similar claims were submitted by the Organization on behalf of the same claimant for a variety of later dates.

After receipt of Award No. 8270, the Organization pressed the five pending claims. The Organization's position on the property was that they should be settled in the following manner:

"... it /is/ my position that under Referee McMurray's decision, the five (5) time claims are allowable under the same criteria as Referee McMurray ruled under Award No. 8270 in that he allowed eighteen (18) hours out of thirty-one hours under his decision covered by Docket No. 8087 which is 58.06% of the total claim. It was the employees position that the same percentage was due on the five (5) claims being held in abeyance."

The Carrier did not accept such proposal. The Carrier properly argues that Award No. 8270 is a sustaining award only in instances where a supervisor or an employee of another carrier performs the claimed work.

The record shows that the claim here is not for work performed by a supervisor or by an employee of another carrier. Award No. 8270 may be read to provide pay only if such circumstances prevail. Since the Organization has made no such showing, and since the Board finds no basis to take issue with the findings and resolution on Award No. 8270, the Organization's claim for a percentage of pay -- or any pay at all -- is without merit.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 11th day of January, 1984