

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 9816  
Docket No. 9527  
2-B&O-CM-'84

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States and Canada  
( The 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 June 10, 1980, Carrier failed to utilize members of the Cumberland assigned wrecking crew at a derailment at Garrett, Pennsylvania and utilized the services of two (2) outside contractors with a combined total of outside contractors ground forces, fifteen groundmen and three (3) Foremen, in violation of Rules 29, 138, 142, 142 1/2 (formerly Article VII of the December 4, 1975 Agreement, depriving Claimants herein, to compensated service to which they were contractually entitled, thus causing them monetary injury.
- No. 2. That Carrier is in violation of Rule 15 of the controlling Agreement in addition to the Rules referred to above, with regard to certain Claimants herein named.
- No. 3. That Carrier be ordered to compensate Claimants for such monetary losses account this flagrant violation of the Rules of the controlling Agreement, as follows: Carmen, A. T. Rice Jr., P. H. Sibley, W. C. Shaffer, G. R. Shafferman, J. E. Bierman, L. D. Saville, W. D. Rawnsley, H. W. Plum, and F. M. Gardine, for eight (8) hours at the time and one-half rate, each, and eight (8) hours at the doubletime rate, each; R. Whisner, P. E. McKenzie, E. C. Kipe, and W. J. Mason, for sixteen (16) hours at the time and one-half rate, each, and eight (8) hours at the doubletime rate, each.

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 employes 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.

At approximately 2:10 A.M. on June 10, 1980, Train Extra West 6493 derailed near Thomas, West Virginia. Approximately two (2) hours later another derailment occurred at Garrett, Pennsylvania. Carrier called the Cumberland, Maryland assigned wrecking crew and instructed them to proceed to the Garrett, Pennsylvania derailment. However, at 6:30 A.M., the Carrier cancelled their call, and instructed the Connellsville, Pennsylvania assigned wrecking crew to proceed to the Garrett derailment to await two outside contractors (Penn Erecting Company and Hulcher Wrecking Service) and assist them in rerailing grain train 4239. At approximately 9:00 A.M. on June 10, 1980, the Cumberland assigned wreck crew was called and directed to proceed to the Thomas, West Virginia derailment. The crew was not relieved until 9:00 A.M. on June 11, 1980. After the Garrett derailment was cleared, the two outside contractors departed the derailment site at approximately 8:00 P.M. on June 10, and the Connellsville wreck crew was relieved at 11:00 P.M. on June 10, 1980.

On August 1, 1980, the Employees filed the instant multi-faceted claim. Initially, the Employees claimed that the controlling Agreement was violated when Carrier failed to use the Cumberland assigned wrecking crew at the Garrett derailment. The Employees insisted that it was the Cumberland wrecking crew, not the Connellsville wrecking crew, that should have been dispatched to the Garrett site.

The Employees also argued that Rule 15 of the parties' Agreement was violated since the Cumberland wreck crew consisted of only five (5) employees on June 10, 1980. However, Carrier was required to maintain a fifteen (15) member crew pursuant to the provisions of Rule 142 1/2 (formerly Article VII of the December 4, 1975 Agreement), according to the Employees.

Finally, the Employees insisted that since the Carrier utilized the services of two outside contractors at the Garrett derailment, it was therefor required to use two assigned wrecking crews at that site. Since the Cumberland crew was reasonably accessible to the wreck, the Employees submit that they should have been called to assist in rerailing of the Garrett derailment.

Most of the arguments advanced by the Employees in this dispute have been previously addressed by this Division. For instance, in Award No. 8284 it was held that a Carrier could not chose a smaller wrecking crew over a larger wrecking crew where both wrecking crews were reasonably accessible to the wreck, and the smaller crew was not of sufficient size to meet the work demands of the derailment.

In Award No. 9091 this Division ruled that it was not impermissible for a Carrier to use more than one outside contractor at a derailment. However, when the Carrier calls a second outside contractor it was also obligated to call a second assigned wrecking crew provided the crew was reasonably accessible and the crew members were available.

We specifically incorporate by reference the findings of Award Nos. 8284 and 9091. Accordingly, since the Carrier utilized two outside contractors at the Garrett derailment it was obligated to use two assigned wreck crews, which it admittedly did not do. However, it must be noted that between 9:00 A.M. and 8:00 P.M. on June 10, 1980, when the outside contractors were used, the Cumberland wreck crew was assigned to wreck service at Thomas, West Virginia. Thus, the only additional compensation due them was for the hours 6:30 A.M. to 9:00 A.M. on June 10, 1980. If the members of the Cumberland assigned wreck crew (save for Shafferman and Bierman who were not in the crew on June 10, 1980) have not been compensated for these hours the Carrier is ordered to so compensate them.

Despite the Employees' contrary assertion, there was no violation of Rule 15 in the dispute at hand. Rule 15 controls the filling of new jobs and/or vacancies in the Carmen craft. It does not govern the filling of wreck train crews. And even if it did, there is simply no evidence in the record before us that extra tool car personnel Plum, McKenzie, Kipe, Mason, Gardine, and Whisner would have been selected to fill these positions. Since these employees were not members of Carrier's assigned wrecking crew on June 10, 1980, Carrier was not obligated to call them for wreck service. [See Second Division Award No. 8679.]

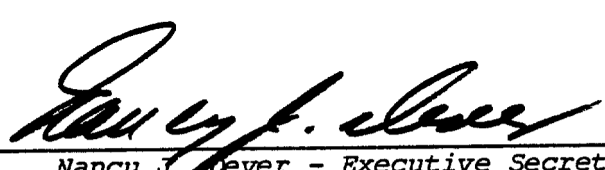
Notwithstanding the Employees' strenuous argument, there was simply nothing improper about Carrier assigning the Cumberland wreck crew to the Thomas, West Virginia derailment; and the Connellsville wreck crew at the Garrett, Pennsylvania wreck. The controlling Agreement did not grant the Cumberland crew the right to work both derailments. Nor did it allow them to select the specific derailment it wished to work. And even if the Cumberland wreck crew was somehow entitled to work the Garrett derailment, no additional compensation would be due them since they earned more compensation account being assigned to the Thomas wreck than the Connellsville crew earned at the Garrett wreck. Their claim for additional compensation is, therefore, unmeritorious.

A W A R D

Claim disposed of per the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 7th day of March, 1984