

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

(Brotherhood Railway Carmen of the United
(States and Canada, A.F.L. - C.I.O.
Parties to Dispute: (
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

No. 1. That Carrier violated the controlling Agreement, specifically, Rule 142-1/2, when on the date of December 10, 1980, they failed to call members of the Washington Indiana assigned wrecking crew to a derailment at Lawrenceville, Illinois, Engine 4334 and twelve cars derailing. Carrier called to this derailment an outside contractor, Hulcher Emergency Service out of Highland, Illinois, equipment, eight (8) groundmen, (1) Foreman, and three (3) operators. In addition, Carrier called three (3) carmen off the overtime list at Washington, Indiana and instructed them to take the Washington, Indiana wreck truck, blocks, and rerailers, and allowed them to engage in the rerailing and/or wrecking work at this derailment, all in complete and total violation of Rule 142-1/2 of the controlling Agreement.

No. 2. That Carrier be ordered to compensate the following Claimants for all monetary losses incurred by them account this violation as follows: R. E. Clark, Clarence Hicks, and Eugene Matteson, each, for seven (7) hours' pay at the time and one-half 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 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.

On December 10, 1980, the Flora, Illinois Turn Train was involved in a derailment at Lawrenceville, Illinois. Hulcher Emergency Service, an outside contractor and its equipment and forces were called by the Carrier at approximately 11:45 P.M. on the date of December 10, 1980, the Carrier additionally, called three Carmen, not assigned wreck crew members, from the overtime list at Washington, Indiana to this derailment, and instructed them to take a truck and blocks and rerailers, and they ultimately arrived on the scene at approximately 1:30 A.M. December 11, 1980. The Claimants herein, contend that they are members of the Washington, Indiana assigned wrecking crew, and that they were reasonably accessible and available to this derailment, and were not called; and they claim this is a violation of the Agreement.

The Carrier in its Submission referring to Second Division Award 8766 (Marx), states:

"Most important, the Board went on to rule that Agreement rules did not require that the Carrier 'formally' abolish the Washington wreck crew assignments but that the Carrier was obligated to put the former wreck crew members on notice that the assignments no longer existed. It was further determined that this notice was provided by letter dated December 22, 1976..."

The Carrier does not cite the portions of Second Division Award 8766 which state that the Carrier was not required to "formally" abolish the Washington wreck crew assignments, but was only obligated to put the former wreck crew on notice that their assignments no longer existed and that such notice was provided by letter dated December 22, 1976. We have examined Award No. 8766 and cannot find the asserted rulings in that Award. In fact Award No. 8766 points out that the Carrier did not abolish the wrecking crew. Please refer to the third sentence of the below quoted language from Award 8766:

"Whether the Carrier's change of viewpoint in December 1976 alters matters thereafter is not now at issue before the Board. The existence of an assigned wrecking crew up to December 1976, while perhaps not required in view of limited equipment, was certainly not prohibited. The Board need not resolve when or how the Carrier might have abolished the crew: the facts of record are that it not only did not do so but, until well after the October 6 incident, accepted and endorsed the crew's existence, thus requiring compliance with the strictures of Article VII, as here claimed. (Emphasis added to the third sentence).

In Award No. 7926 (Larney) issued on May 16, 1979 a majority of this Board pointed out that the wreck crew assignments are subject to the abolishment procedures of the applicable Agreement. The Dissent to that award pointed out an apparent error in the Majority's citation of Rule 24(h) as the rule that was amended by Article III of the June 5, 1962 National Agreement and it points out, that it was paragraph (b) of Rule 24 that was so amended; and made further arguments including the lack of logic in requiring the abolishment of wreck crew assignments. Second Division Award No. 7926 is clear in its requirement that since wreck crew assignments are bulletined positions, they are subject to the formal abolishment procedures of the Agreement. A party acts at its own peril when it fails to follow the findings of a Board majority. The instant case occurred on December 10, 1980 and no evidence of record indicates that the Carrier at that point in time had yet abolished the wreck crew assignments at Washington, Indiana in accordance with the Agreement. There is no showing in this case that the December 22, 1979 letter, which was a declination of a claim by the Carrier's Manager of the Car Department, met the requirements for abolishment of positions set forth in the Agreement.

We find that absent evidence that the Carrier abolished the assigned wrecking crew at Washington, Indiana, we must sustain this claim. The language of Second Division Awards 9014, 8766, and 7926 support this finding. Awards 9014, 8766 and 7926 involving the same parties, established that the presence of a "wrecking derrick" is not an absolute requirement or the sine qua non of the existence of an "assigned wrecking crew"; and that the absence and removal of the "wrecking derrick" was not found contractually to be the sole determinant which automatically and instantaneously abolished an "assigned wrecking crew". In award No. 9014 this Board pointed out that the prior decisions were not found to be arbitrary or capricious so as to warrant reversal.

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Award No. 9887
Docket No. 9766
2-B&O-CM-'84

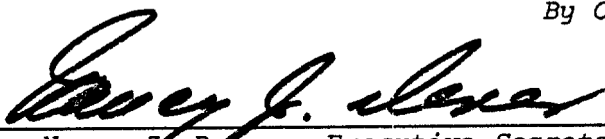
We shall sustain this claim for 7 hours for each of the three Claimants,
but at the straight time or pro rata rate of pay.

A W A R D

Claim sustained, as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984