

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Kansas City Southern Railway Company
(Louisiana and Arkansas Railway Company

Dispute: Claim of Employees:

That the Kansas City Southern Railway Company - Louisiana and Arkansas Railway Company violated the agreement between the Kansas City Southern Railway Company - Louisiana & Arkansas Railway Company, and the Brotherhood Railway Carmen of the United States and Canada, effective April 1, 1980, and the Railway Labor Act, when it failed to pay Carmen J. J. Picone and M. Wallace each eight hours pay at the pro rata rate for the date of April 4, 1981, account outside contractor loading and securing Car ACFX 78144 on flat car MTTX 650926 in Reserve Yard.

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.

An outside contractor - Kent's Emergency Railroad Service - loaded a derailed car unto a flat car in Carrier Reserve Yard, Reserve, Louisiana. This happened on April 4, 1981.

No wreck crews or carmen are employed at the Reserve Yard. Claimants are employed at the Carrier's facility in New Orleans, Louisiana, which is approximately twenty (20) or thirty (30) miles from Reserve.

Employes contend that the Carrier violated Rule 75 when it failed to call the Claimants to load the derailed car on the flat car. The pertinent language in Rule 75 is the following:

"(a) Regularly assigned wrecking crews, including the wrecker engineer will be composed of carmen, and will be paid for such service under Rule 9.

(b) When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classifications.

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

* * *

(e) When pursuant to rules and practices a carrier utilizes the equipment of a contractor (with or without forces) for performance of wrecking service, a sufficient number of carrier's assigned wrecking crew, if reasonably accessible to the wreck will be called ... to work with the contractor. The contractor's ground forces will not be used, however, unless all available and reasonably accessible members of the assigned wrecking crew are called ..."

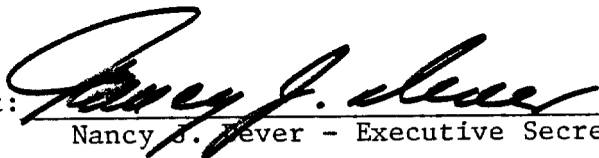
The undisputed facts are that there was no wrecking crew at Reserve Yard. No wrecking crew at Reserve Yard could have been called. Claimants had no seniority at Reserve Yard. They were twenty (20) or thirty (30) miles away. They were not available and reasonably accessible to perform the work at Reserve Yard. In no way did the Carrier violate any of the provisions in Rule 75. Sections (b) and (e) of that Rule, relied upon by Employees, are not applicable because the provisions therein did not become effective since no wrecking crew was called as prescribed in Section (e). The precedent awards cited by the employees in no way apply to the facts here.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of October, 1984