Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10162
Docket No. 9558
2-B&O-CM-'84

The Second Division consisted of the regular members and in addition Referee George S. Roukis 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 Employes:

No. 1. That Carrier violated the terms and/or provisions of the controlling Agreement, specifically, Article VII of the December 4, 1975 Agreement, such provisions contained in Rule 142 1/2, when on the date of August 14, 1980, they failed to call the Benwood assigned wrecking crew out of Benwood, W. Va., to a derailment at Bellaire, Ohio, on the Newark Division, such derailment occurring three (3) miles Northwest of the Benwood Car Shop. Carrier utilized the services of an outside contractor, equipment, and groundforces, and allowed them to work at this derailment for a period of three (3) and one-half hours, void of any Carrier forces. Two carmen, not members of the Benwood assigned wrecking crew were ultimately called to the scene. Outside contractor and forces called at 8:00 A.M. on the date of August 14, 1980, while Carrier's call for the two (2) carmen was executed at 3:30 P.M. The Benwood assigned wrecking crew was available and reasonably accessible to the wreck, and not called.

No. 2. That Carrier be ordered to compensate Claimants herein for all monetary losses suffered account this violation as follows: J. S. Polsinelli, for eight (8) hours pay at the time and one-half rate; E. Magnone, for sixteen (16) hours pay at the time and one-half rate; H. A. Conti, eight (8) hours pay at the time and one-half rate, and one (1) hour doubletime; W. S. Phipps and L. A. Sharpe, eight (8) hours pay at the time and one-half rate; and that heretofore, they, Carrier, be ordered to recognize the existence of an assigned wrecking crew at Benwood, W. Va., such recognition to which they are contractually entitled under the provisions of Article VII of the December 4, 1975 Agreement, and/or Rule 142 1/2 of the controlling Agreement.

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.

The basic issue herein involving the same parties has been submitted to this Board on several occasions, but the pivotal question, namely, the purported existence or nonexistence of an assigned wreck crew, has been argued from several perspectives.

In the instant case, the Organization argues that an assigned wreck crew existed at Benwood, West Virginia since Carrier had not officially abolished these positions when it did not replace the wreck derrick in 1978. Further, it argues that Rule 142 1/2 of the Controlling Agreement which is a verbatim adoption of Article VII of the December 4, 1975 Agreement de facto perpetuates the size of the assigned wrecking crew existing at the time of the aforesaid Agreement. It asserts that the prior rulings of this Division which require as an indispensable precondition the formal abolishment of assigned wrecking crew positions are controlling, and thus, Carrier was compelled to observe strictly Article VII of the December 4, 1975 Agreement.

Carrier contends that when it removed permanently the wrecking derrick from Benwood, West Virginia in 1978, the assigned wrecking crew at that situs ceased to exist. It argues that in the absence of a wrecking outfit, which by definition presupposes the existence of a wrecking derrick, an assigned wrecking crew is moot since such a crew can only exist at a location where a wrecking outfit is assigned. It avers that it clearly apprised the Organization by letter, dated, December 1, 1978, that a wrecking crew no longer existed at Benwood, West Virginia when the wrecking derrick was removed; and notes that this communication was in response to an analogous type claim. In effect, it maintains that this letter was an explicit indication that the assigned wreck crew positions were abolished.

In our review of this case, we concur with the Organization's position. In a series of Awards involving the same parties, we consistently held that the abolishment of wreck crew assignments are subject to the abolishment procedures of the applicable agreement and moreover, the presence of a wrecking derrick is not an absolute defining requirement vis the existence of an assigned wrecking crew. For example, in Second Division Award No. 9887, we foursquarely addressed this issue. We stated in part:

> "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."

Based on this interpretive assessment, we find no evidence that Carrier observed these procedures. Its December 1, 1978 letter was not a formal notification that the wreck crew positions were abolished pursuant to the applicable provisions of the Controlling Agreement, it merely reiterated its position that with the removal of the wreck derrick and by extension, the wreck outfit, the wreck crew ceased to exist. This posture clearly reflected an argumentative position and was not a formal indication that said wreck crew positions were abolished consistent with the Agreement. Moreover, in this same Award, we also held:

"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 view of this construction and our similar findings in Second Division Award Nos. 7926, 8766, 9014 and 9712 et al, we must sustain the claim. We do not agree with the monetary compensation requested by the Organization or its position that Foreman J. S. Polsinelli is entitled by Agreement to compensation. The other Claimants are to be paid at the straight time rate for six (6) hours and fifteen (15) minutes which was the time the outside contractor worked on August 14, 1980.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of December 1984.