

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
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Current Agreement of January 1, 1943, (formerly Virginian) as subsequently amended, when on February 29, 1980, they failed to call the entire regularly assigned Wreck Crew to perform wrecking service near Oceana, West Virginia, a Point on the Norfolk and Western Railway Company, but instead called two (2) Employees from another Craft, the Maintenance of Way, including an Out-Side Contractor, a Mining Company's off-track equipment, with one (1) Contract employee. Furthermore, Carrier permitted (sic) one (1) of the M of W Employees to operate a Clamshell, which is converted into a Derrick Car by changing various attachments to the boom.
2. That the Norfolk and Western Railway Company failed to call one (1) regularly assigned member of the Wreck Crew, including a Wreck Engineer.
3. That the Norfolk and Western Railway Company did violate the Rules of the Current Agreement, particularly, Rules No. 113 and 114, including Article VII of the December 4, 1975 Agreement.
4. Prior to the December 4, 1975 Agreement, the Wreck Crew consisted of two (2) Carmen, one (1) Helper Carman as Groundman, and (1) Carman Derrick Engineer.
5. That because of such violations and capricious actions, the Norfolk and Western Railway Company be ordered to compensate Carmen M. F. Mills and E. J. Clark nine (9) hours at the overtime rate of pay, account, of loss suffered due to such violations, and restore the same number of regularly assigned members of the Wreck Crew as was in effect December 4, 1975.

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.

In Second Division Award No. 10102 involving the same parties and virtually the same arbitral questions, the Board held that none of the cited scheduled Agreement rules nor Article VII of the December 4, 1975 Agreement were violated when Carrier failed to call the named Claimants and instead, used Maintenance of Way forces to perform wrecking service on September 8, 1980. In that dispute, we held that the Clamshell equipment was not a substitute Derrick Wreck Car as contended by Claimants, and moreover, Carmen did not have exclusive right to derailment work outside yard limits. More pointedly, we held that no wrecking crews existed at Elmore.

Since the fact specifics herein are virtually equivalent to the facts in the above-referenced predecessor case and since we do not find any pivotal distinction or variable that would justify a reconsideration of the matter, we are constrained, of necessity, to follow our prior holdings. (See Second Division Award Nos. 10102 and 10134.)


In the case before, there was no violation of Rules 110, 113 or 114 of the Controlling Rules Agreement, nor any violation of Article VII of the December 4, 1975 Agreement when Carrier on February 29, 1980 failed to call Claimants to perform wrecking service near Oceana, West Virginia.

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 5th day of December 1984.