

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 March 6, 1980, they failed to call the regularly assigned Wreck Crew to perform wrecking service near Oceana, WV, a Point on the Norfolk and Western Railway Company, but instead called three (3) Employees from another Craft, the Maintenance of Way ( M of W), including two (2) Substitute Derrick Wreck Cars. Furthermore, Carrier permitted two (2) of the M of W Employees to operate the Clamshell(s), which are converted into Substitute Car(s) by removing cotter key and bolt from boom, including the bucket, attaching hook(s) and various other attachments to perform wrecking service.
2. That the Norfolk and Western Railway Company failed to call one (1) regularly assigned member of the Wreck Crew, including Wreck Engineer (s) to operate the Substitute Wreck Car (s).
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 J. L. Morris and C. J. Edwards six (6) 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, in essence, the same issue, the Board held that Carrier did not violate Agreement Rules 110, 113, 114 or Article VII of the December 4, 1975 Agreement when it did not call Claimants to perform wrecking service near the Elmore-Mullens Terminal. The facts and arguments in that case foursquarely parallel the facts herein and the posited arbitral issue is the same. Based upon our assessment of the findings and rationale of Award No. 10102 referenced above and another recent Second Division Award No. 10134, we find no distinctions or unique circumstances that would warrant a variant interpretation and thus, of necessity, we must strictly adhere to the principle of Res Judicata. Moreover, similar to our findings in Award No. 10102 we cannot conclude that a wrecking crew existed at the Elmore situs on September 8, 1980, nor that the clamshell equipment was a derrick wreck car. In Award No. 10102, we stated in part:

"Since carmen do not have exclusive right to derailment work outside yard limits and since no wrecking crews existed at Elmore, the operation of the clamshell crane by Maintenance of Way employes violated no rule in schedule agreements between the parties. Furthermore, Rule 110 applies to building, repairing, inspecting, etc. of train equipment. It does not grant carmen exclusive right to operate cranes, especially outside yard limits. A clamshell crane is not, in any event, a Derrick Wreck Car."

There was no violation of the Rules cited by Petitioner when Carrier failed to call Claimants to perform wrecking service work on March 6, 1980 near Oceana, West Virginia and as such, the claim must be denied. Award No. 10102 is controlling.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dover - Executive Secretary

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