

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10351
Docket No. 10145
2-N&W-CM-'85

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers 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 Rules 16, 24, 28, 33, 124, and 125 of the controlling Agreement when it removed Carmen S. W. Hess, R. R. Wassie, and B. G. Williams from the Bellevue Wreck Crew Call Out List effective Monday, January 4, 1982, at Bellevue, Ohio.
2. That the Norfolk and Western Railway Company be ordered to immediately return Carmen S. W. Hess, R. R. Wassie, and B. G. Williams to their rightful place on the Bellevue Wreck Crew Call Out List and pay each of them for all time lost if they had not been arbitrarily removed from the Bellevue Wreck Crew Call Out List, Bellevue, Ohio.

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.

Claimants, Carmen S. W. Hess, R. R. Wassie, and B. G. Williams, are employed at Carrier's Bellevue, Ohio, terminal facility. Claimants have been employed by Carrier since March 27, 1957; February 13, 1958; and March 16, 1967, respectively. In addition to their regular duties, Claimants, through the exercise of their seniority rights, were on a wrecking crew call out list wherein they would be called and utilized for wrecking operations in the event that there were not sufficient employes to do the work.

For the period July through December 1981, the Claimants collectively accepted only three calls for wrecking service, refused thirty-seven calls, and were not available for twenty calls. As a result of that, the Claimants were asked, individually by the Carrier to remove their names from the call list due to the waste of time and added expense that the Carrier incurred in its attempts to get the Claimants to respond to the calls. The Claimants refused to agree to have their names voluntarily removed from the wreck crew call out list.

On December 17, 1981, the Carrier sent the Claimants a joint letter advising them that their names were being involuntarily removed from the wreck crew call out list effective January 4, 1982. The Claimants were advised of the following:

"...your name is being removed from the Bellevue Wreck Crew Call out list effective Monday, January 4, 1982; as you have failed to accept wreck calls in the past, or have not responded at all.

This is a very expensive situation, and required additional time to the Carrier. Also as you are aware, the wrecking operation is most generally an emergency situation, and we must have employees available who will accept calls as necessary."

The Claimants filed a grievance and claim on January 7, 1982, for all time lost resulting from their removal from the list.

The Organization's position is that by removing Claimants' names from the wreck crew call out list, the Carrier has violated Rules 16, 24, 28, 33, 124, and 125 of the controlling Agreement. These Rules are as follows:

"Rule 16--Bulletining New Jobs and Vacancies. When new jobs are created or vacancies occur in the respective crafts, the oldest employee in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. All vacancies or new jobs created will be bulletined. Bulletins must be posted five days before vacancies are filled permanently. Employees desiring to avail themselves of this rule will make written application to the official in charge, and a copy of the application will be given to the local chairman.

An employee exercising his seniority rights under this rule will do so without expense to the carrier. He will lose his right to the job he left; and if after a fair trial he fails to qualify for the new position, he will have to take whatever position may be open in his craft.

Temporary vacancy of 30 days or more will be bulletined. Employees filling such temporary vacancies will be returned to their former positions at the expiration of the temporary position."

"Rule 24--Reduction of Forces. When it becomes necessary to reduce expenses at any point or in any department or subdivision thereof, the forces shall be reduced. Seniority as per Rule 28 govern. The employees affected to take the rate of the job to which they are assigned. In reducing forces the ratio of apprentices will be maintained.

"Three working days' notice will be given men affected before reduction is made and lists be given local committee.

In the reduction of forces, employees who so desire may waive their seniority rights in favor of a junior employee, seniority to govern, at that point. Such waiver shall be in writing and a copy furnished the local committee.

In the restoration of forces, senior laid off men, including those who have waived their rights as per the preceding paragraph, will be given preference in returning to service, if available within seven days, and shall be returned to their former position if possible. Local committee will be furnished list of men to be restored to service."

"Rule 28--Seniority. Seniority of employees in each craft covered by this agreement shall be confined to the point employed in the Maintenance of Equipment Department.

Four subdivisions of the Carmen as follows: Pattern Makers; Upholsterers; Painters; other Carmen.

The seniority lists will be open to inspection and copy furnished the committee.

In the event that work is moved from any point, the employees affected at the point the work is moved from will have the privilege of exercising their seniority rights at the point employed to any job that may be preferable to them in their craft according to their seniority.

Men promoted to supervisory capacity (both monthly and hourly rated positions) will hold and accumulate seniority in their respective crafts at the point last employed as craftsmen and may exercise such seniority if displaced either account of position being abolished or for no reasons of his own; if such positions be vacated for reasons of his own, he will then take the position of junior employee of his craft and after which he can exercise his seniority to fill any vacancy or new position."

"Rule 33. An employee shall not be discharged for any cause without first being given an investigation.

If it is found that an employee has been unjustly discharged or dealt with, such employee shall be reinstated and shall be compensated for the wage loss, if any, suffered by him, the compensation earned by him in outside employment in the meantime shall be taken into consideration in determining the wage loss."

"Rule 124--Wrecking Crews. Regularly assigned wrecking crews, not including engineers, will be composed of carmen, where sufficient men are available, and will be paid for such service under Rule 9."

"Rule 125. When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany outfit. For wrecks or derailments within yard limits sufficient carmen will be called to perform the work."

The Organization argues that the Claimants' names should not have been removed from the list for failure to take calls because nothing in the above-cited rules requires employees on wrecking call lists to accept calls for wrecking service. In fact, the Organization contends that the language of Rules 124 and 125 recognizes the possibility of employee unavailability for such work. For example, Rule 124 refers to situations "where sufficient men are available" and "when needed, men of any class may be taken as additional members of wrecking crews...".

The Organization further contends that the Claimants were discriminated against by the Carrier's unilateral and arbitrary application of standards in this case as no other employee has been treated in like manner for a similar offense.

Lastly, the Organization contends that Carrier's letter of December 17, 1981, is a form of discipline which entitles Claimants to investigation as provided by Rule 33 of the controlling Agreement.

The Carrier's position is that the removal of the Claimants' names from the wreck crew call list for their consistent failure to respond to calls is not in violation of any Rule, including Rules 16, 24, 28, 33, 124, and 125 of the controlling Agreement.

It is the Carrier's position that it is under no obligation under the provisions of the current Agreement, or past practice, to carry on the wreck crew call-out list the names of persons who continually fail to respond to calls. Carrier contends that maintaining such individuals on this list and calling them for duty is a waste of the Carrier's time, efforts, and money. Additionally, Carrier argues that Claimants have offered nothing to indicate that they would respond to calls in the future if their names were reinstated to the list.

Finally, it is the Carrier's position that there is no basis, in light of the Claimants' consistent record of not responding to calls, for claims for lost time.

After a thorough review of the record in this case, this Board finds that the Carrier's removal of the Claimants' names from the wreck crew call-out list did not violate Rules 16, 24, 28, 33, 124, or 125.

It is the Board's opinion that none of the above Rules give the Carmen the privilege of remaining on the wreck crew call-out call list indefinitely when they failed to accept calls on a consistent basis and show no intention of accepting calls in the future. Claimants' response to service calls for the period July through December 1981 is as follows: Claimant Hess, who was called twenty-one times, accepted no calls; Claimant Wassie, who was called twenty-one times, accepted one call; and Claimant Williams, who was called fifteen times, accepted two calls.

The record of the Claimants' failures in responding to calls in the past shows that it has been, and would appear to continue to be, nothing more than a waste of the Carrier's time, efforts, and money to call Claimants for service calls. Most of these requests are in times of emergency, and the Carrier has a right to have employees on the list who are more dependable and who will be more responsive to the emergency calls.

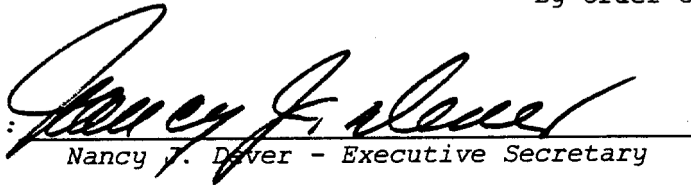
The record in this case contains nothing that convinces this Board that the action of the Carrier should be overturned.

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 27th day of March 1985.