

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig 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 Employees:

1. That the Baltimore and Ohio Railroad Company violated the controlling agreement, specifically Rules 141, 142 and 142 1/2, when they called an outside contractor, Hulcher Emergency Service, with their equipment and ground forces to perform wrecking service at Mt. Vernon, Hunts Corner, Ohio on the date of January 5, 1982, in lieu of the Willard, Ohio assigned wrecking crew.
2. That accordingly, Carrier be ordered to compensate the members of the Willard, Ohio assigned wreck crew as follows:

Carmen: A. J. Long, F. W. Long, R. J. Long, R. C. Cavalier, D. P. Rose, G. K. Colich, L. E. Masterson, E. W. Bannaworth and C. C. Capelle, eight (8) hours pay, each, at the time and one-half rate and one hour, each, at the double time rate:
R. J. Mahl, seven hours pay at the time and one-half rate.

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 Claimants are members of an assigned Wrecking Crew at Willard, Ohio. On January 5, 1982, a derailment of four cars occurred at Mt. Vernon, Hunts Corner, Ohio. To assist in the rerailing of the cars, the Carrier called Hulcher Emergency Service and two Carmen from Newark, Ohio. According to the Carrier, the Contractor furnished three Foremen and ten Groundmen and commenced work on January 6, 1982 at 4:00 A.M., and finished at 9:15 A.M., a total of five hours and fifteen (15) minutes.

The Organization contends that the Contractor commenced work at 12:30 A.M., January 6, 1982, and finished at 7:30 A.M. that same date.

The Carrier argues that the Organization has not cited a specific provision in the Agreement that would support the penalty demanded by it. It further argues, relying primarily upon Second Division Award No. 9014, which it asserts resolved a similar dispute between these parties, that compensation, if any, is limited to the straight time rates for the precise period the Contractor was actually on the site.

For its part, the Organization submits that its claim must be sustained in its entirety. It mainly relies upon Rules 142 1/2 and 7 of the Agreement and Second Division Awards 8444, 8724 and 4317 which it contends supports its position in this matter.

The Board has thoroughly reviewed and considered all of the contentions progressed by the parties. The evidence shows that the assigned Wrecking Crew at Willard, Ohio was available and reasonably accessible to the derailment site at the time the Contractor was called. Moreover, the Carrier has not refuted the Claimants' contentions that they were available to perform the work. Therefore, what remains are the issues surrounding the matter of compensation.

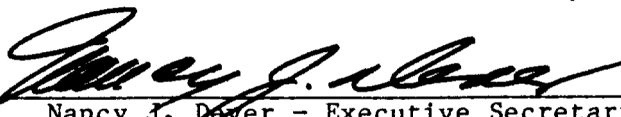
With respect to compensation, the parties are not in agreement as to the time that the Contractor was called or when he was relieved. However, there was unquestionably lost work opportunity to the Claimants in the decision to use outside forces to perform work which is reserved to them by the Agreement. Accordingly, since the Agreement here does not contain provisions to make an award as advanced by the Organization, we follow the long line of awards and Court decisions holding that the breach of the contract, under the facts and circumstances here, entitled the wronged party only to compensation for any harm he may have suffered. We are also guided by the general thrust of decided cases on the property under comparable situations, as here, particularly Second Division Awards 8766, 9014, 9091, 9712 and 9887, with respect to the rate of pay. Moreover, while the Board is not unmindful of Second Division Award 9014, concerning that part of its holding that compensation was due for Contractor time "actually on site", here we do not find the facts and circumstances leading to that award precisely on point in this case. Accordingly, the claim here is for nine (9) hours for nine (9) crew members and seven hours for the tenth and final member of the crew. These hours approximate the time that the Contractor was called and relieved. Accordingly, after a complete review of all of the contentions and submissions of both parties, we embrace the pro rata concept, having been established that this is the measure of work lost and, in applying the make whole principle, the Claimants will be awarded compensation at the straight time rate for the time claimed.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1985.