

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 Rule 142 1/2, when they called an outside contractor, Hulcher Emergency Service, with their equipment and ground forces to perform wrecking service near Shelby, Ohio, on the date of February 9, 1982, in lieu of calling the Willard, Ohio assigned wrecking crew.
2. That accordingly, Carrier be ordered to compensate all members of the Willard, Ohio, assigned wrecking crew as follows: Carmen: A. J. Long, R. J. Long, G. K. Colich, D. P. Rose, E. W. Bannaworth, R. C. Cavalier, P. W. Long, and C. C. Capelle, each, eight (8) hour's pay at the time and one-half rate and one (1) hour's pay at the double-time rate; F. W. Long, eleven (11) hours and thirty (30) minutes pay at the time and one-half rate; R. J. Mahl, three (3) hours and thirty (30) minutes 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.

This dispute concerns the claim by the Organization that the Carrier's assigned Wrecking Crews should have been called for work on February 9, 1982, for a derailment.

The record shows that on February 9, 1982, Train Shelby Turn derailed one locomotive and seven cars at Shelby, Ohio. The Carrier states that it called two Carmen from Newark, Ohio, and the Hulcher Emergency Service, an outside Contractor, to assist in rerailing the locomotive and cars. The Contractor furnished three Foremen and ten Groundmen to perform the necessary functions.

With respect to the essential elements which would impact upon these claims, the Organization states that the Contractor arrived on the scene of the derailment at 3:30 P.M., commenced work at 4:35 P.M. and finished at 11:00 P.M. The Carrier asserts that Hulcher was utilized from 6:30 P.M. to 11:30 P.M., a period of five (5) hours.

The provisions of Rule 142 1/2 of the Shop Crafts Agreement are cited as being violated. The Organization essentially asserts that the Willard assigned Wrecking Crew, located some twelve miles from the derailment site should have been called to perform the claimed work. It relies upon that portion of Rule 142 1/2 which reads:

"When pursuant to rules or practices, a Carrier utilizes the equipment of a contractor (with or without forces) for the performance of wrecking service, a sufficient number of the Carrier's assigned wrecking crew, if reasonably accessible to the wreck, will be called (with or without the Carrier's wrecking equipment and its operators) to work with the contractor." [Emphasis added.]

The Board has thoroughly reviewed and considered all of the contentions advanced by the parties and finds that the record is clear and convincing that an assigned wrecking Crew was reasonably accessible and available as contemplated by the aforementioned Rule 142 1/2.

Turning to the compensation aspect of this claim, we note that the Carrier has objected to the claim of P. W. Long contending that he, as an extra or relief Wreck Crew member, is not a regularly assigned wrecking crew member, within the meaning and intent of Rules 141, 142 and 142 1/2 of the Shop Crafts Agreement. Accordingly, it argues that he would not have been called for the wrecking work in this instance.

We sustain the Carrier's objection in this respect relying upon our interpretation of the Rule and its application to the particular facts of this claim, and Second Division Award 8679 which resolved a similar dispute on the Carrier's property. Therefore, we dismiss the claim to the extent that it relates to P. W. Long.

With respect to the compensation due each of the remaining Claimants, there was unquestionably lost work opportunity to the Claimants (although the exact hours lost are in dispute) in the decision to use outside forces to perform work which is reserved to them by the Agreement. However, the Agreement here does not contain provisions to make an award as advanced by the Organization. Accordingly, we follow the long line of awards and Court decisions that the breach of the contract, under the facts and circumstances here, entitles the wronged party to the amount it would have earned if the breach had not occurred. We are also guided by the general thrust of decided cases on the property under comparable situations, particularly Second Division Awards 8766, 9014, 9091, 9712 and 9887, which recognize the propriety of the use of the straight time rate of pay. Moreover, while the Board is not unmindful of Second Division Award 9014 concerning that part of its holding

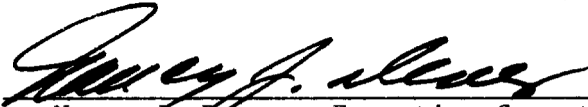
that compensation was due for Contractor time "actually on site", here we do not find the facts and circumstances leading to that Award precisely on point. Accordingly, after a complete review of each of the contentions and submissions of the parties, we embrace the pro rata rate concept, having been established that this is the measure of work lost. Therefore, in applying the make whole principle, we find that the claimed nine hours for the remaining seven crew members (excluding P. W. Long) and three (3) hours and thirty (30) minutes claimed by R. J. Mahl, to be within the time period that the Contractor was called and relieved. With respect to F. W. Long, his claim is reduced to ten (10) hours. For all Claimants, compensation is awarded at the straight time rate.

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 20th day of November 1985.