Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10681
Docket No. 10342
2-B&O-CM-'85

The Second Division consisted of the regular members and in addition Referee T. Page Sharp 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 Employes:

1. That the Baltimore and Ohio Railroad Company violated the controlling Agreement, when on the date of April 18, 1982, they called to a derailment at Breman (sic), IN, an outside contractor, Hulcher Wrecking Service, utilizing ten (10) outside contractor's ground forces and three (3) Foremen, plus equipment, allowing the outside contractor to perform wrecking service at this derailment, completely void of any Carrier's assigned wrecking crew, the Willard, Ohio assigned wrecking crew, in this instance, being reasonably accessible and available, and not called in violation of Rule 142 1/2 of the controlling Agreement.

2. That accordingly Carrier be ordered to compensate the following Claimants for all time lost account Carrier's violation of their Agreement as follows: On the date of April 18, 1982, five hours and 30 minutes, and on the date of April 19, 1982, four hours, all at the time and one-half rate, each Claimant, as follows: A. J. Long, G. K. Colich, E. W. Bannaworth, R. C. Cavalier, L. A. Masterson, D. P. Rose, C. C. Capelle, F. W. Long, P. W. Long, and R. J. Long, (all members of the Willard, Ohio assigned wrecking crew).

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.

On April 18, 1982, a Carrier train derailed at Bremen, Indiana, at approximately 2:30 A.M. The Carrier states that Hulcher Emergency Services was called at 5:40 A.M. and arrived at the site of the derailment at 9:00 A.M. Utilizing its equipment and ten of its employees as groundmen, Hulcher cleared the derailment at 2:10 P.M. Carrier's assigned wrecking crew, the Willard, Ohio wrecking crew was not called. Claims were submitted based on an alleged violation of Rule 142 1/2 of the controlling Agreement.

Rule 142 1/2 reads:

> "1. 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 operators) to work with the contractor. The contractor's ground forces will not be used, however, unless all available and reasonably accessible members of the assigned wrecking crew are called. The number of employes assigned to the Carrier's wrecking crew for purposes of this rule will be the number assigned as of the date of this Agreement.
>
> NOTE: In determining whether the Carrier's assigned wrecking crew is reasonably accessible to the wreck, it will be assumed that the groundmen of the wrecking crew are called at approximately the same time as the contractor is instructed to proceed to the work."

There is no issue here concerning the use of an outside contractor. Hence, the sole issue is the definition of reasonably accessible within the facts of this case. At the first level a letter of declination was written which stated in part:

> "Attached hereto is a copy of Form L-733 covering work performed by the Willard, Ohio, wrecking crew at Bremen, Indiana, on July 7, 1980. You will note that the form records it required the Willard wreck crew five (5) hours and thirty (30) minutes to travel from Willard to Bremen in that instance. Under the circumstances, we cannot agree that the members of the Willard wreck crew could be considered as 'reasonably accessible' as contemplated by the rule."

The second step letter of declination stated in part:

> "Upon examination of past performances of the Willard crew in traveling to derailments, particularly on July 1, 1980 when they required 5 hours and 30 minutes to travel to Bremen, it is quite obvious that the Willard wreck crew was not 'reasonably accessible' to the wreck at Bremen as contemplated by Rule 142 1/2."

The Organization introduced uncontroverted evidence into the record that showed that the Willard crew on the July 1, 1980 derailment had not had dinner and had stopped enroute to eat. The same evidence challenged the Carrier's records and stated that the trip only took 5 hours. Whether this mitigated against the length of time taken to get to the derailment was not argued to us. Even if the length of time was admittedly excessive, the Carrier is not justified in utilizing this "sin of the past" to undercut a current situation.

Of more importance is a random sample of the Willard crew response time referred to in the second step letter. It showed that on five different derailments the response time was 29.3, 33.2, 27.5, 14.4, and 17.0 miles per hour. The case has been argued since the initial filing of the claim on the basis that the derailment site and Willard are 182.8 rail miles apart. Whether this relates to road miles is unknown to us, but since the figure was accepted by the parties, we assume that it is.

In his letter to the Carrier, the General Chairman stated in part:

> "Even if the Willard assigned wrecking crew was obliged to travel 182.8 road miles to reach the scene of the derailment as Carrier alleges, traveling by automobile at a speed of 55 miles per hour, Claimants could have reached the scene of the derailment at approximately the same time that Carrier alleges the outside contractor, and forces, and equipment, arrived on the scene."

We cannot accept this as fact. That the wrecking crew could be called, ready themselves, and average the top legal speed limit on the way to the derailment strains credibility. Especially is this so in light of the sample of the Willard crew's past speed performance.

The Carrier is eager to have a derailment cleared. If it has to employ an outside contractor, as here, it does not want to have to pay for the contractor to be idle while it waits for Carrier employees to reach the scene. We assume the Carrier was in good faith in raising the previous derailment at the same site. If reliable it would be the best yardstick by which to judge performance. We must also assume that a wrecking crew on the way to a derailment did not afford itself the luxury of a leisurely dinner. Discounting by thirty minutes, the length of time required to reach the derailment deviates substantially from the time required for the contractor to reach the scene.

We hold that, given the distance from the scene, the Carrier was justified in its assumption that the wrecking crew was not reasonably accessible.

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 11th day of December 1985.