

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10745
Docket No. 10570
2-N&W-CM-'86

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute; (
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated Rules 124 and 125 of the controlling agreement when the Bellevue, Ohio wreck outfit was called for service outside of yard limits and not accompanied by the regularly assigned wreck crew at Bellevue, Ohio, on March 13, 1983.
2. That the Norfolk and Western Railway Company be ordered to compensate Bellevue, Ohio, regularly assigned wreck crew Carmen B. G. Wheeler, F. A. Kercher, R. Perrin, W. R. Cramer, R. L. Maxfield, E. Shumake, and W. Beamer, in the amount of ten and one-quarter (10 1/4) hours each at the punitive rate of pay for March 13, 1983.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 facts in this dispute do not appear to be in controversy. The Carrier's Bellevue, Ohio, wreck derrick was called for a derailment at 9:15 A.M., Sunday, March 13, 1983. The derailment occurred at Clarksfield, Ohio, some twenty-four miles from Bellevue. Carman W. D. Clapp, a regularly assigned wreck crew member at Bellevue accompanied the Bellevue derrick to Clarksfield, Ohio and reportedly "observed" Carmen from Brewster, Ohio, clearing up the derailment at Clarksfield with the use of the Bellevue derrick. After completing the work of rerailing equipment at Clarksfield, Carmen Clapp accompanied the derrick back to Bellevue, arriving there at 7:30 P.M., March 13, 1983. The Claimants herein, in addition to Carman W. D. Clapp, are the regularly assigned wreck crew at Bellevue.

The Organization contends that the Carrier was in violation of Rules 124 and 125 of the applicable Agreement by not calling the regularly assigned members of the wreck crew at Bellevue to accompany the Bellevue derrick and perform the rerailling work at Clarksfield. Rules 124 and 125 provide:

"RULE 121 - WRECKING CREWS

Regularly assigned crews, not including engineers, will be composed of carmen where sufficient men are available, and will be paid for such service under Rule 9. Meals and lodging will be provided by the company while crews are on duty in wrecking service.

When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification."

"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 above rules were cited by the Organization in the on-property handling.

The Carrier contends that Clarksfield, Ohio, is located on the territory covered by the former Wheeling Lake Erie schedule Agreement and the WLE crew located at Brewster, Ohio performs wrecking service for Clarksfield; that on the date involved the Brewster derrick was undergoing repairs in Roanoke, Virginia, and Carrier called the derrick located at Bellevue (on the former Nickel Plate Railroad) and the wrecking crew, with the exception of Carman Clapp, assigned to the Brewster derrick was called to do the rerailling work with the use of the Bellevue derrick.

The issue involved is not one of first impression before the Board. Numerous prior Awards have been issued by this Division involving rules similar to Rules 124 and 125 relied upon by the Organization herein, upholding the rights of regularly assigned wrecking crew members to accompany the wrecker derrick when used in the territory of or beyond the points where other wrecking outfits were maintained. See Second Division Awards Nos. 2185, 4675 and others cited therein, 5003, 5492 and others cited therein, and 7307. We do not consider the many prior Awards to be in palpable error.

We are not impressed by the Carrier's "damned if you do and damned if you don't" argument in view of the many precedent Awards of this Division, some of which were called to the Carrier's attention in the on-property handling. Neither do we distinguish between "derrick," "wrecker," and "wrecking outfit."

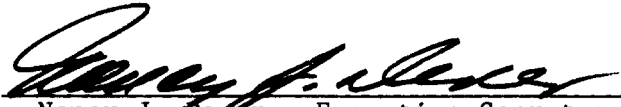
We will sustain the claim to the extent that Claimants be paid the difference between what they earned on March 13, 1983, and what they would have earned on that date if they had accompanied the Bellevue derrick to Clarksfield, performed the rerailment work at that location and accompanied the derrick back to Bellevue.

A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1986.