

The Second Division consisted of the regular members and in addition Referee Hyman Cohen 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 Rule No. 118 of the controlling agreement of September 1, 1949, as subsequently amended, and Article VII of the Mediation Agreement dated December 4, 1975, when on September 12, 1982, Carrier failed to call the entire wreck crew to accompany the Williamson Wreck Derrick and Cars, from Williamson, West Virginia, to Plucket Yard at Kopperston, West Virginia.

2. That because of such violation and unjust action the Norfolk and Western Railway Company be ordered to compensate members of the Williamson Wreck Crew the following: W. A. Keesee, T. R. Chandler and D. W. Caroway for one (1) hour each at the straight time rate and six and one-half hours each at the time and one-half rate on September 12, 1982.

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 employed at its facility located at Williamson, West Virginia.

On September 12, 1982, a wreck occurred in the vicinity of Koppers-
ton, West Virginia. At 4:00 P.M. the Carrier called and used three (3) mem-
bers of the Williamson wreck crew - - the Derrick Car Engineer, Cook and
Wreckmaster to accompany the derrick car to Plucket Yard, Kopperston, West

Virginia. The rest of the Williamson Wreck Crew was called at 3:30 A.M. and they were taken to the wreck site by automobile. By failing to call the entire wreck crew to accompany the members of the crew at 4:00 P.M. on September 12, the Organization contends that the Carrier violated Rule 118 of the Controlling Agreement and Article VII of the 1975 Mediation Agreement.

A threshold issue, raised by the Organization must be resolved before any consideration can be given to the merits of the instant dispute. The Organization contends that its appeal was not disallowed within 60 days from February 17, 1983, the date it was filed. Accordingly, under Article V of the Agreement, the Claim is required to be allowed as presented.

The record indicates that the Carrier's denial of the Organization's appeal was placed in the U.S. Mail at Bluefield, West Virginia, by the Master Mechanic at 2:15 P.M., April 14, 1983. The Labor Relations Department receipt stamp that appears on the letter of denial shows that the letter was received at 11:30 A.M. on April 15, 1983. Moreover, the Master Mechanic's letter dated April 14, 1983, was not returned by the Postal Service to the Master Mechanic. This leads the Board to conclude "that the letter was correctly addressed and mailed * *." See Second Division Award No. 3285.

With respect to the merits of the instant dispute, the Board cannot conclude that the Carrier has violated Rule 118 of the Controlling Agreement. Rule 118 is entitled "Wrecking Crews" but there are no terms, express or implied, to justify a requirement that the Carrier is to call all members of the wrecking crew at the same time. Distinguishing Rule 118 from the Rules on Wrecking Crews that are referred to in the Awards cited by the Organization, namely Second Division Awards Nos. 7779, 7307, 9708, and 9749, Rule 118 does not provide that "a sufficient number of the regularly assigned crew will accompany the outfit." Indeed, no such terms are contained in Rule 118. As a result, the Awards cited by the Organization cannot be given much, if any, weight.

In addition, this Board cannot conclude that Article VII of the 1975 Mediation Agreement was violated by the Carrier. Article VII applies to a Carrier's utilization of the equipment of a contractor and that the Carrier is required to call a ground crew to work with the contractor on the derailment. There was no contractor utilized in this case. Consequently, Article VII is not applicable.

Moreover, the events that transpired on September 12, 1982 cannot be overlooked. The wreck did not require immediate attention. The wreck car was moved by a train crew on September 12 so it would be in place on the morning of September 13. The Wreckmaster, Derrick Car Engineer and Cook were called to go on the equipment for protection in the handling of the equipment and to have breakfast prepared during the early morning of September 13, 1982.

As a final matter to consider, the Organization asserts a past practice which imposes a requirement upon the Carrier to call all members of the wrecking crew at the same time. The mere assertion of a practice cannot be elevated to fact and cannot be considered probative evidence. No such practice can be found in the record.

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 10th day of September 1986.