

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Burlington Northern Railroad Company knowingly and willfully violated the provisions of the current controlling Agreement when they failed to assign carmen to assist contractors at a derailment.

2. That Carmen G. Whalen, H. Heilman, M. Cain, S. Nickens, D. Dixon and A. Bilkey be compensated for a total time of thirty-eight and five tenths (38.5) hours each, at the time and one-half rate of pay.

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 August 11, 1984, four cars were derailed at Carrier's Lindenwood Yards, St. Louis, Missouri. At 11:00 P.M. Elliot Crane Service, Inc. was called to reraill the cars. Two RC60 cranes arrived; each crane had one operator and one groundman. The cranes were used for ten hours and 45 minutes, with the rerailling being completed at 11:45 A.M. In addition, L & E Railroad Services furnished a 977 Caterpillar with two groundmen, arriving at 5:00 A.M., so that they worked a total of six hours and 45 minutes.

The Organization contends that Carrier violated Agreement Rule 86 (b) and (c) when it utilized outside contractors to perform wrecking service on the date in question. The Rules provide as follows:

"Rule 86. WRECKING CREWS

(b) When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will either accompany the outfit or will be transported by other means to and from the location of the wreck or derailment. For wrecks or derailments within the yard limits, sufficient carmen will be called to perform the work.

(c) In the event other than company-owned equipment is used for wrecks or derailments outside yard limits, sufficient carmen from the nearest location will be called to perform ground service (not operating) with the other than company owned equipment. The number of carmen called will be sufficient when it equals or exceeds the number of groundmen used by the outside firm."

The Organization contends, and we agree, that Carrier violated Agreement Rule 86 (b) and (c) when it utilized outside contractors to perform wrecking service on the date in question. In this case four groundmen were used - two for Elliot Crane Service totaling 21 hours and 30 minutes, and two for L & T Railroad Services totaling 13 hours and 30 minutes, for a total number of 35 hours.

At issue here is whether all the named Claimants were available to perform the service, and if so, whether a Claim at the time and one half rate is proper. After careful review of the record in its entirety, we find that three of the Claimants were not available to be called, and, therefore, their Claims must be denied. Carman Heilman was on vacation starting August 13, 1984. Thus, August 12, the date the work was performed, was a rest day immediately preceding his vacation. Similarly, Claimant Nickens was on vacation from July 30 to August 10, 1984, so that August 12 was a rest day immediately succeeding his vacation. Neither has specified in writing pursuant to Rule 8 (c) that they desired to avail themselves of overtime calls on that date. Accordingly, Carmen Heilman and Nickens failed to comply with Rule 8 (c) and are not proper Claimants.

Claimant Bilkey was working vacation relief at Centralia, Illinois during the period August 4 through 26, 1984, and was also unavailable for service. Though he contended that he would be home on the weekend, since he was assigned at another point, he was not available for overtime at St. Louis.

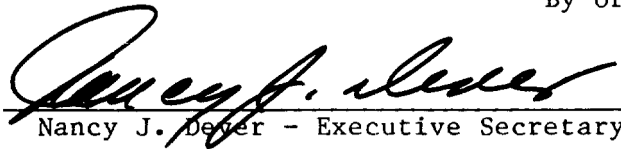
The remaining three Claimants, Whalen, Cain and Dixon, are entitled to pay for the time worked by the outside firm's groundsmen. Two Claimants are entitled to ten hours and 45 minutes each, and one is entitled to pay for six hours and 45 minutes. We note that the Organization Claim for time and one-half for service not performed is not supported by prior Awards of this Division. (See Second Division Award Nos. 10010, 10153 and 10488). Accordingly, the straight time rate, and not the overtime rate, shall apply.

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 30th day of September 1987.