

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE:

(
(Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM:

1. That the Baltimore and Ohio Railroad Company violated the current controlling agreement, specifically, Rule 142 1/2 (Article VII of the December 4, 1975 Agreement), when they improperly abolished all wrecking crew positions at Benwood, West Virginia by bulletin dated January 10, 1985.

2. That the Baltimore and Ohio Railroad Company violated the time limit provisions of the agreement when Manager Mechanical L. R. Koster failed to respond to Local Chairman Sharpe's claim dated January 28, 1985 within sixty days.

3. That accordingly, the Baltimore and Ohio Railroad Company be ordered to withdraw the January 10, 1985 bulletin thereby re-establishing the wrecking crew positions in compliance with Rule 142 1/2 which reads: "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."

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 Claim arose after the Carrier had abolished all Wrecking Crew positions at Benwood, West Virginia by bulletin dated January 10, 1985.

With respect to the merits of this Claim, the issues to be decided are identical to those that the Board addressed in Second Division Award 11631. Accordingly, on the merits of this Claim, we find it must be denied.

However, in the instant case, the Carrier violated the time limit provision of the Agreement because it did not respond to the Organization's Claim within sixty (60) days as established by the Parties' Agreement. Given the clear violation, the question before the Board is the matter of a remedy.

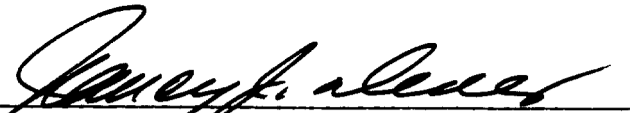
The record developed on the property reveals that, subsequent to the abolishment of the Wrecking Crew positions on January 10, 1985 until the time of this Claim, the Carrier did not use an outside contractor for derailment work. The former Wrecking Crew did not suffer a monetary loss. Therefore, while we recognize that a violation of the time limit provisions of the Parties' Agreement is an infraction that cannot be lightly set aside, under the particular circumstances of this record, given our earlier holding with respect to the merits, and because no harm was suffered by the employees, we conclude that this aspect of the Claim must also be denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1989.