

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That the Southern Pacific Transportation Company violated the terms of Rules 15 and 111 of the current working agreement when the Carrier failed to call the relief outfit crew when on June 14, 1986 the Carrier sent the Tucson foreman and the Pettibone wrecking truck with Carman R. Valdenegro assigned wrecking truck operator without the Tucson, Arizona relief outfit crew.

2. That accordingly, the Southern Pacific Transportation Company be ordered to compensate Carmen J. Quinn, B. Benitez, T. Vega, R. Ochod and D. Berral eight (8) hours at the time and one-half rate for June 14, 15, 16 and 17, 1986.

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 Claim of the Organization is that the Carrier violated Agreement Rules 15 and 111 when the Carrier utilized the Pettibone wrecking truck, one Carman and a Foreman for an alleged derailment. The Organization argues that the Relief Outfit crew should have been called for wrecking service.

The Carrier response of July 7, 1986, does not rebut the charge of wrecking service. In the Carrier's denial of Claim, it refers to "rerailing cars" which was not previously mentioned by the Organization. During the progression of the Claim, the Carrier admits that the Carman did assist in the clean-up of the derailment and was paid at the time and one-half rate for June 14, 15, 16, and 17, 1986.

The Board finds that the Organization initially claims Carman R. Valdenegro performed wrecking service on June 14 and 15, 1986. It notes that he was called to the derailment along with a Foreman and the Pettibone wrecking truck. The Organization further argues that two Carmen from Demming, New Mexico, were also at the site "performing wrecking service."

The Carrier does not explicitly deny the above facts. Carman Valdenegro was paid at the time and one-half rate for work at the site on June 14, 15, 16, and 17, 1986. Carrier notes in its letter of September 22, 1986 that Carman Valenegro was called to "assist in the clean-up of the derailment." It is not contested that the actual derailment occurred at 4:30 PM on June 7, 1986. However, Carrier states in that letter that: "Clean-up work commenced June 16th, and was completed on June 21, 1986."

The dates of June 14 and 15, 1986, herein claimed by the Organization as wrecking service were not explicitly denied by the Carrier. Nor does the Carrier deny that Carmen from Demming were at the site "performing wrecking service." The Board concludes from this record that wrecking service was performed on those two dates.

Carrier assertions that Carmen Benitez, Vega, and Berral were not proper Claimants on those dates went un rebutted. Un rebutted assertions stand as fact.

As for the dates of June 16 and 17, 1986, they were not raised by the Organization at any time while this Claim was on the property and will not be considered by this Board. While not fatal to the Claim, the additional dates are beyond this Board's review. The Organization neither clarified nor pursued "all the time the outside concern takes..." as it progressed this Claim. Even if, arguendo, it had claimed those dates, which it did not, the Organization did not provide probative evidence that would allow this Board to find that the work performed could constitute wrecking service (Second Division Awards 4571, 9423, 10887).

The Board concludes that Carmen Quinn and Ochod (the Carrier notes in its Submission that the proper spelling of Claimant is Ochoa) should receive the time and one-half rate of pay for the dates of June 14 and 15, 1986, wherein Carrier did not deny that wrecking service was performed. It denies compensation for additional dates due to the un rebutted assertion that cleanup work began on June 16, 1986 and the fact that the Claim as progressed on the property did not include those dates.

A W A R D


Claim sustained in accordance with the Findings.

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Award No. 11705
Docket No. 11437
89-2-87-2-89

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1989.