

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

(Brotherhood Railway Carmen/Division of TCU
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Carmen G. G. Gubbels and J. E. Adkins, Council Bluffs, Iowa, were deprived of work and wages to which they were entitled when the Chicago and North Western Transportation Company failed to call them for a major derailment involving nineteen (19) derailed freight cars on May 3, 1987 at Fremont, Nebraska where a contractor and its employees were utilized at the wreck site.

2. The Chicago and North Western Transportation Company violated the controlling agreement when they assigned two mechanics-in-charge to assist in rerailling operations rather than the two carmen claimants, who hold bulletined positions as wrecker groundmen.

3. Accordingly, Carmen G. G. Gubbels and J. E. Adkins are each entitled to be compensated in the amount of one hour preparatory time at \$13.77; sixteen and one-half hours at the time and one half rate of \$19.89 per hour; and incentive wrecking differential pay of \$4.13, for a total of \$358.70 each.

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 essential facts are not disputed. On May 3, 1987, Carrier called an outside contractor based at Sioux City, Iowa to reraill nineteen cars loaded with perishables and autos. The derailment occurred at Fremont, Nebraska, approximately seventy-five (75) miles from the contractor. As no Carmen were employed at Fremont, Carrier assigned two Mechanics-In-Charge from Missouri Valley approximately thirty six (36) miles from the wreck site to assist the contractor.

The Organization advances this Claim on the grounds that the Carrier violated Rule 60 when it failed to call two Carmen to assist at the derailment from their base at Council Bluffs, Iowa, approximately forty-nine (49) miles from the wreck site. It is the position of the Organization that Claimants were denied their rights by Carrier's action in that they are assigned as wrecking groundmen and were nearer the wreck site than the contractor called. The Organization points to Letter Agreement of February 4, 1976, which states in part:

"Carmen are considered to be reasonably accessible (available) provided that, they have been called at the same time the contractors' forces were called, they could have arrived at the wreck site at the same time as the contractors' force arrived."

Carrier contends that the two MIC's were called because the wreck site was not a point where Carmen were employed. In addition the MIC's came from a closer point. The Carrier argues it did not violate the Agreement in that the Mechanic-In-Charge Agreement permits MIC's to perform any and all mechanics work. It points to Second Division Award 11420 as supporting Carrier's decision.

In our review of the record and the above cited Award, we have taken note of the Organization's argument of the new Agreement of July 1, 1984, and in particular Classification of Carmens' Work Rule 58, Paragraph 16. Award 11420 pertained to the new Agreement. Starting with Award 9974, this Board has continued to hold that the Carrier has the right to use MICs under the conditions of Rule 60 (2)(b) (Second Division Awards 9974, 9976, 10494, 11420).

There is no probative evidence, Rule language, or Award that restricts Carrier in the manner urged by the Organization. The Organization's argument that Award 11420 is inapplicable to the current Agreement of July 1, 1984, is not accepted by this Board. Award 11420 refers to events which occurred under the current Agreement Rules.

In the instant case the Carrier used MICs who covered this territory and were closer to the wreck site. A review of the record indicates no wrecking crew was called, only a contractor. The Claim must be denied under these circumstances where there is no Rule precluding the use of MICs to performing groundmen's duties at the derailment.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1990.