

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood Railway Carmen/Division of TCU  
(CSX Transportation, Inc. (The Baltimore and Ohio  
Railroad Company)

STATEMENT OF CLAIM:

1. That the Baltimore and Ohio Railroad Company violated the controlling agreement, specifically Rule 142 1/2, when on the date of May 6, 1987, Carrier utilized the outside contractor, Hulcher Emergency Service, as additional forces to perform wrecking duties with the Carrier forces from Connellsville, Pennsylvania, whereas Carrier did not call in addition to, or in lieu of the outside contractor forces, Carrier wrecking crew forces located at Cumberland, Maryland, to Confluence, Pennsylvania, to clear the wreck of Train Connellsville Extra West with Engine 4274, 7573 and 6781 having 116 cars which derailed 28 cars at or about 4:20 a.m. on May 6, 1987.

2. That accordingly, Carrier be ordered to compensate claimants for all monetary losses suffered as a result of such violation, such losses to Claimants: A. T. Rice, W. C. Shaffer, L. O. White, C. E. Lewis, F. M. Gardine, N. R. Rader, C. E. Barr, R. L. See, H. W. Hobell and H. W. Plum each for sixteen (16) hours straight time rate, eighteen (18) hours time and one-half rate, and twelve (12) hours double time rate; Claimants P. E. McKenzie and W. J. Mason each for eight (8) hours straight time rate, twenty-six (26) hours time and one-half rate, and twelve (12) hours double time rate; and for Claimants: R. H. Schriver and W. F. Fitzpatrick each for eight (8) hours straight time rate, twenty-two (22) hours time and one-half rate, and sixteen (16) hours double time rate; on account Carrier utilized the additional ground forces of the outside contractor in lieu of the Carrier wrecking forces from Cumberland, Maryland to perform the wrecking operation at Confluence, Pennsylvania, thusly, causing claimants above being deprived of their contractual rights under the provisions of Rule 142 1/2 of the controlling 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.

The basic facts of this case are set forth as follows: on May 6, 1987, at about 4:20 A.M., Train "Connellsville Extra West" identified by Lead Locomotive 4274 was involved in a derailment at Confluence, Pennsylvania, approximately 15 miles west of Connellsville, Pennsylvania. The train consisted of 116 cars, 28 of which were derailed. To clear the derailment, Carrier called its closest wreck crew and outfit from Connellsville with the crew consisting of 1 wreckmaster, 1 crane operator, 1 cook and 4 groundsmen. In addition, Carrier engaged the services of Hulcher Wrecking Service, which in this instance comprised 1 supervisor, 2 assistant supervisors, 5 equipment operators (and vehicle drivers), and 9 vehicle drivers (and groundsmen). The derailment was cleared at approximately 6:30 A.M. on May 7, 1987.

It was the Organization's position that Carrier violated Rule 142 1/2 of the Agreement, when Carrier realizing that the size of the wreck crew at Connellsville, Pennsylvania, was insufficient to handle the magnitude of the derailment purposely made arrangements with the outside contractor to supply a sizable crew. The Organization maintained that by utilizing the outside contractor's additional forces and not using a sufficient number of Carrier's assigned crew, specifically, the wreck crew at Cumberland, Carrier circumvented Rule 142 1/2. The Cumberland crew was larger and located 65 miles from the derailment. In support of its position, the Organization reviewed the specific language of Rule 142 1/2 and several Second Division Awards dealing with the same Rule and the same type of circumstances. In particular, it referenced Second Division Award 8284 on the property, specifically the language reading:

"In so finding, we are of the belief that the determination as to which of the reasonably accessible assigned wrecking crews is of sufficient size (in those situations where more than one wrecking crew is reasonably accessible to the wreck, with all things being equal), should be based, among other considerations, on the size of the independent contractor's crew arranged for by carrier relative to the comparative differences in crew size among the eligible wrecking crews. These determinations should be made on a case by case basis."

See also Second Division Award 9091 on the property.

Conversely, Carrier contended that it acted in accordance with the intent of Rule 142 1/2, since off-track equipment was needed and consequently, it could only be obtained by the outside contractor. It disputed the Organization's assertion that it specified the size of the outside contractor's forces, arguing instead that the outside contractor determines the crew size needed. It further observed that the Connellsville wreck crew was not only the closest wreck crew to the derailment, but that the entire crew was called and utilized. Moreover, it pointed out that under Rule 142 1/2, it is obligated to assign and call only one (1) Carrier crew to work with the outside contractor. Since it falls within Management's discretion to designate which one crew will be called and since Rule 142 1/2 does not require the calling of one particular crew or a wreck crew in a number equal or greater than the force of the contractor, Carrier concluded that it fully complied with the requirements of Rule 142 1/2. It took notice of Second Division Award 8284, but argued that the second part of that Award, correlating crew size with the size of the outside contractor's forces was patently erroneous and unsupported by the language of Rule 142 1/2.

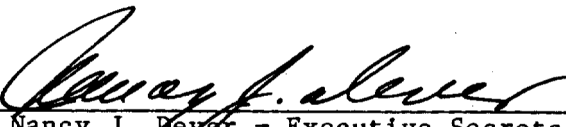
In considering this case, we agree with the Organization's basic interpretative position. Firstly, though the Cumberland wrecking crew was further from the site of the derailment, it was nevertheless reasonably accessible to the location. There were no indications that distance was of major significance in this case, nor that the Cumberland wrecking crew was arguably inaccessible. Secondly, while Carrier was required to call both the outside contractor and the reasonably accessible wrecking crew at approximately the same time, Carrier was certainly aware or should have been aware that a disproportionate relationship between the size of the outside contractor's forces and the wrecking crew called would most likely prompt the Organization to question the wrecking crew called. This is particularly so, under the authority of Second Division Award 8284, where the size of the outside contractor's forces to the wrecking crew called reflected a ratio of 2:1. In the case herein, the outside forces numbered 17, while the Connellsville wrecking crew totaled 7. Moreover, 28 cars were derailed in the fact circumstances of Award 8284 and off-track equipment was needed to perform the required work. In the instant case, 28 cars were derailed and off-track equipment was needed to perform the rerailing work. The magnitude of the work would presuppose a significant number of outside forces. In Second Division Award 8284, where the Board held that a ratio of slightly more than 2 to 1 was not in accord with the spirit and intent of a Rule (Article VII) similar to Rule 142 1/2, we find that same construction applicable herein. By extension, however, we are not setting forth a formularized solution, but merely noting that the equation also contains the variable of comparative differences in crew size among the eligible wrecking crews. In essence, it is a case by case determination. Second Division Award 8284 is controlling. We will sustain the Claim at the straight time rate. The overtime rate demanded by the Organization is excessive.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 11th day of July 1990.