

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. That the Norfolk and Western Railway Company violated Rules 119, 120 and Article VII of the December 4, 1975 Agreement, when they arbitrarily denied the regular assigned wrecking crew at Moberly, Missouri the right to perform wrecking service when they were reasonably accessible and available to perform wrecking service at the wreck that occurred at McCoy, Iowa.

2. That because of such violation the Norfolk and Western Railway Company be ordered to compensate Carman W. A. Robinson, D. E. Smith and R. W. Briscoe, who are regularly assigned to the wrecking crew at Moberly, Missouri, the amount of eleven (11) hours at the time and one-half rate, and eight (8) hours at the time and one-half rate for W. W. Roberts, who is also assigned to the wrecking crew at Moberly, Missouri.

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.

During the evening of January 25, 1988, Carrier's Maintenance of Way forces turned over and derailed two cars at McCoy, Iowa. An outside contractor, located at Des Moines, Iowa, six miles away, was engaged to drag the derailed equipment clear of the main line, with the intent of rerailing the equipment the following morning. At approximately the same time the contractor was being contacted, a Wreckmaster, Groundman, and Derrick Engineer, stationed at Moberly, Missouri, 202 miles from the wreck site, were told to report at 4:00 A.M. and drive to the derailment to assist the contractor in the rerailing operation.

When the contractor arrived at the scene, it was determined that it would be quicker, easier and more beneficial to reraill the cars at the time, rather than clearing the main line and rerailling them the following morning. The two cars were rerailled within two hours of his arrival.

In the meantime the Wreckmaster and his two crewmen left Moberly and commenced the trip to McCoy. They were delayed four hours enroute at Albia, Iowa, (63 miles from the derailment), because of inclement weather. They arrived at the derailment at 2:00 P.M., repaired the equipment and returned to Moberly, arriving at 11:15 P.M., January 26, 1988.

Nearly a month after the derailment this Claim was filed contending that the Agreement was violated when "management ... assigned other than the regular assigned Wrecking Crew, who were available and reasonably accessible to the wreck" to the derailment at McCoy, Iowa.

In the circumstances present here we don't believe that the Claim has merit. It seems that an attempt was made to comply with the Agreement and have the Moberly Wrecking Crew at the site when the rerailling operation was scheduled to be undertaken. Two extraordinary developments occurred which upset clear intentions to adhere to the Agreement provisions; one, it was easier for the contractor to reraill the equipment rather than clear it away from the line and wait until the Wrecking Crew arrived, and; two, the Wrecking Crew was delayed enroute because of inclement weather.

While some may view these extraordinary circumstances, nonetheless, as a technical violation of the Agreement, the Wrecking Crew was underpay and would not have received any additional compensation had the contractor waited to reraill the equipment after they arrived.

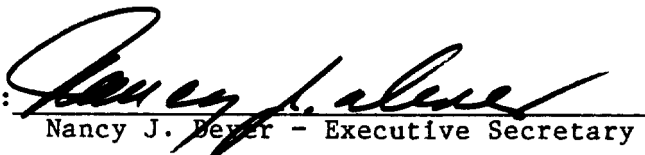
The Claim is without merit and will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of November 1990.