

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

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

STATEMENT OF CLAIM:

1. Carmen John Adkins and Ron Burns, Council Bluffs, Iowa, were deprived of work and wages to which they were entitled when the Chicago and North Western Transportation Company violated the controlling agreement when it failed to call and use the above named carmen claimants for a major derailment on March 10, 1989 involving the following five freight cars: GATX 66454, TILX 260280, ACFX 82476, RTMX 13139 and CNW 173785. The carrier utilized private contractor Berg Corporation, which used side boom cats to clear up the major derailment and instructed Mechanic-in-charge to travel from his home point at Missouri Valley, Iowa to assist the private contractor in performing carman groundman's duties at the derailment. Contractor and Mechanic-in-charge worked at the wreck site a total of seven and one-half (7.5) hours.

2. Carmen Leslie Leytham, Jerry Dirks and Gene Miller, Council Bluffs, Iowa, were deprived of work and wages to which they were entitled when the Chicago and North Western Transportation Company violated the controlling agreement when it failed to call and use the above named carmen claimants for a major derailment on March 20, 1989 involving the following six freight cars: CNW 173950, CNW 752836, CNW 178039, CNW 173303, CNW 181755 and CNW 181765. The carrier utilized private contractor Berg Corporation, which used side boom cats to clear up the major derailment. The carrier instructed two mechanics-in-charge to travel from their home point at Missouri Valley, Iowa to assist the private contractor in performing carman groundman's duties at the derailment. Contractor and mechanics-in-charge worked at the wreck site for a total of five (5) hours.

3. Accordingly, that the Chicago and North Western Transportation Company be ordered to compensate Carman John Adkins and Carman Ron Burns for seven and one-half (7.5) hours pay at the time and one-half rate amounting to \$158.40, plus incentive wrecking differential of 25 cents per hour amounting to \$1.88, for a total of \$160.28 AND that the Chicago and North Western Transportation Company be ordered to compensate Carmen Leslie Leytham, Jerry Dirks and Gene Miller for five (5) hours pay at the time and one-half rate amounting to \$105.60, plus incentive wrecking differential of 25 cents per hour amounting to \$1.25 for a total of \$106.85.

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.

This dispute arose because the Carrier used Mechanics-in-Charge ("MICs") after two separate derailments. Specifically, after a derailment at Sioux City, Iowa, on March 10, 1989, a MIC from Missouri Valley assisted a Contractor in rerailing cars. Following a derailment at South Omaha, Nebraska, on March 20, 1989, two MICs were used to assist the Contractor in rerailing cars.

Controlling in this matter is Rule 60, Wrecking Crew Consist, of the July 1, 1984 Agreement. That Agreement recognizes the rights of the Carrier to clear up derailments as in the instant case. However, as required by Rule 60, when an outside contractor is used, as here, and the contractor provides equipment and operators only for the equipment, the Carrier is required to provide a minimum of two Carmen.

The basic question flowing from the Claim before us is whether Rule 60 precludes the use of MICs to fulfill the complement of Carmen required at a derailment site where a contractor is used. The evidence shows that on March 11, 1989, one MIC was used, rather than two as required by Rule 60. With respect to the work claimed for March 20, 1989, two Carrier employees were used as required by the Rule. Accordingly, there was a violation of the Agreement on March 11, 1989. Therefore, the Claim is sustained to the extent that the senior Claimant is to be compensated, as requested.

We also find that the Organization's reliance upon a Carrier letter, dated February 18, 1976, is not supported by the 1984 Agreement and the Awards of this Division, particularly Award 11420. Moreover, the issues related to the use of MICs to meet the requirements of Rule 60 has been brought up before by the same parties on this property. It has been thoroughly considered and resolved on at least five different occasions in favor of the Carrier's position (Second Division Awards 9974, 9976, 10494, 11420 and 11847). Accordingly, it should now be put to rest.

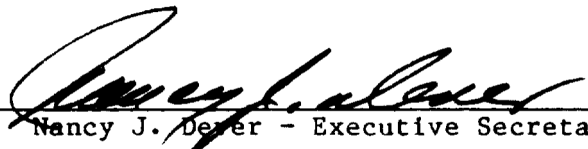
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Award No. 12055
Docket No. 11959
91-2-90-2-68

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.