

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: (
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

1. That the Duluth, Missabe & Iron Range Railroad Company violated the terms of our current agreement, in particular Rule 65(b).

2. That, accordingly, the Duluth, Missabe & Iron Range Railroad Company be ordered to compensate Carmen and Assistant Wrecking Foremen J. Maker, C. D. Carlson, D. J. Wayt, Carman and Wrecking Engineer V. R. Ophus, and Carman and Assistant Wrecking Foreman W. D. Erickson in the amount of seventeen (17) hours each at the time and one-half (1.5) rate for the dates of February 20 and 21, 1990 on account of the Duluth, Missabe & Iron Range Railroad Company failing to keep the crew at the derailment site at Wayman, Minnesota near Hoyt Lakes, Minnesota, until the derailment work was completed.

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 relevant facts leading to this claim are not in dispute. On February 20, 1990, a number of loaded pellet cars derailed at Wyman, Minnesota. The Carrier's Carmen worked at the site of the wreck from approximately 11:30 A.M. until released at 4:00 P.M. The outside contractor worked from 9:30 P.M. on February 20 until 1:30 P.M. on February 21, for a total of 16 hours (not 17, as claimed). Therefore, after the Carmen were released, the contractor remained at the wreck site to complete the work. The basic issue is whether the Carmen had an entitlement, pursuant to Rule 65, to remain at the wreck site until all wrecking work was completed. Rule 65, in pertinent part, reads:

"RULE 65

Wrecking Crews

(a) Regularly assigned crews, including wrecking engineer and assistant wrecking engineer, will be composed of carmen and helpers where sufficient men are available and will be paid for such service under Rule 10....

(b) When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regular assigned crew will be called. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

The Board, after careful review of the record and the various Awards relied upon by both parties, finds in favor of the Organization. Given the particular circumstances in this case, the Carrier's use of an outside contractor was not an abuse of its discretion. However, as we construe the language of Rule 65 (b), the Carrier erred when it relieved its Carmen.


With respect to the question of damages, we again follow a long line of Awards that have addressed this issue under similar circumstances and have held that pay for work not actually performed shall be at the straight-time rate. Accordingly, Claimants are entitled to 16 hours at the pro rata rate of pay.

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 20th day of May 1992.