

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as "carrier") violated the provisions of Article VII of the December 4, 1975 National Agreement when on December 23, 1986 the carrier did not allow Carman Cecil Woods (hereinafter "claimant") to perform his regular bid in position at a derailment cite at Maysville, Kentucky when a contractor and the regular Wreck Crew was called.

2. Accordingly, the claimant is entitled to be compensated for eight (8) and one-half (1/2) hours at the applicable rate of time and one-half for the aforementioned carrier's violation.

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.

On December 23, 1986, two cars derailed at the TTI spur at Maysville, Kentucky. The Russell Wreck Crew was called to the derailment, with two extra Groundmen and one Laborer. In addition, an outside contractor's equipment and forces were called. The Claimant, a Derrick Engineer, was not called but was directed to remain on duty in Russell in the event he was needed for another derailment. The Organization contends that the Claimant should have been sent to the derailment site as part of the Wreck Crew.

Relevant here is Article VII, Wrecking Service, of the December 4, 1975 National Agreement, which reads, in part, as follows:

"1. When pursuant to rules or practices, a carrier utilizes the equipment of a contractor (with or without forces) for the performance of wrecking service, a sufficient number of the carrier's assigned wrecking crew, if reasonably accessible to the wreck, will be called (with or without the carrier's wrecking equipment and its operators) to work with the contractor. The contractor's ground forces will not be used, however, unless all available and reasonably accessible members of the assigned wrecking crew are called."

This clearly offers the Carrier the choice of sending or not sending its wrecking equipment and its operator (in this instance, the Claimant). The Organization, however, relies on a letter dated May 17, 1976, from the Manager Labor Relations to the General Chairman which reads, in pertinent part, as follows:

"This refers to conference on May 5, 1976, at which time we discussed application of the Wrecking Service Rule contained in the December 4, 1975 Shop Crafts Agreement as Article VII.

This will confirm our interim understanding with regard to the order in which the members of Carrier's regularly assigned wreck crews will be called under the rule.

* * *

On the Pere Marquette District of the Chesapeake and Ohio, those presently assigned as groundmen will be considered as one group and called first. The crane operator, fireman and cook (if represented by the Carmen) would constitute a separate group to augment groundmen, when and if needed. . . .

It is understood that the above is only an interim understanding to prevent confusion in the initial application of the Wrecking Service Rule and does not, in any way, add to or detract from Article VII of the December 4, 1975 Agreement."

The Board finds that this does not diminish the meaning of Article VII, as discussed above. The May 17, 1976 letter is noted to be an "interim" document and specifically does not modify Article VII. Further, the letter specifies that the crane operator will be called "when and if needed." Here, for reasons set forth by the Carrier, there was no such need.

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Award No. 12393
Docket No. 12104
92-2-90-2-210

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1992.