

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12535
Docket No. 12426
93-2-91-2-230

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Chicago and North Western
(Transportation Company

STATEMENT OF CLAIM:

- "1. Carmen R. Kress, T. Holt and L. Ivancevic, Proviso, Illinois, were deprived of work and wages to which they were entitled when the Chicago & North Western Transportation Company violated the controlling Agreement on November 4, 1989 at derailment on Track 29 Main in Yard 9, Proviso, Illinois, when the Carrier failed to call the three Claimants to operate Maintenance-of Way crane and rerail air dump car CNW 11857.
2. Accordingly, Carmen R. Kress, T. Holt and L. Ivancevic are entitled to be compensated in the amount of eight (8) hours pay at the time and one-half rate, plus .25 cents per hour derailment pay."

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 employe 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 November 4, 1989, the Carrier experienced a one-car derailment, in an upright position. The car was a maintenance of way air dump hopper and Maintenance of Way forces rerailed the car.

The Carrier asserts that the operation was a "minor derailment," and thus, Rule 60 permits this type of action when a wrecking derrick is not needed, and it insists that a crane is not the equivalent of a wrecking derrick.

The Organization did not agree and insisted that the derailment was not minor because a crane was used to lift the car back onto the rail.

The Agreement specifies various work reserved to Carmen. We note that all or part of regularly assigned wrecking crews, as may be required, will be called for wrecks or derailments, but:

"This does not preclude using other employees to pick up or clear minor derailments when wrecking derrick is not needed."

The parties have continued to debate, on the property and before us, whether or not the action was clearance of a major or minor derailment, and the Organization insists that it was major because the Maintenance of Way crane is comparable to a wrecking derrick.

We are not unmindful of the diverse decisions which have been issued on this property. For instance, Second Division Award 11905 sustained a claim, making reference to a wrecking derrick or a "suitable substitute," and Carrier Members dissent to that Award asserting that said Award added language to Rule 60.

Nonetheless, other Awards have denied claims. See for example Second Division Award 12401 dealing with a rerailing truck to rerail two cars.

This Board has noted the contrary assertions concerning major vs. minor and whether a crane is equivalent to a wrecking derrick. But, in the final analysis we are faced only with conclusions. The Organization has the burden of proof here and we fail to find substantive evidence to establish the basis for the claim. Here, as in Second Division Award 12401,

"...we cannot determine with any degree of substantive precision whether the derailment was actually major or minor...the litmus test under Rule 60 as to whether a wrecking crew is needed is the actual nature of the derailment."

Form 1
Page 3

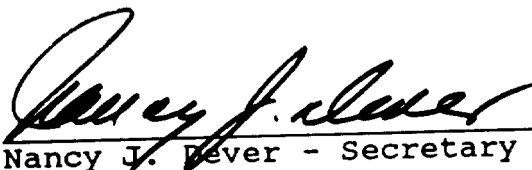
Award No. 12535
Docket No. 12426
93-2-91-2-230

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Secretary to the Board

Dated at Chicago, Illinois, this 12th day of May 1993.