

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12635  
Docket No. 12276  
93-2-91-2-64

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU  
(CSX Transportation, Inc. (former Baltimore and  
(Ohio Railroad Company)

STATEMENT OF CLAIM:

- "1. That the carrier is in violation of Rule 142½ of the controlling agreement when they work an outside contractor (Hulcher) and only used six of the sixteen wreck crew members assigned by the carrier.
2. That the carrier be made to compensate Claimants D. R. Myers, C. R. Jack, D. L. Talley, J. L. Campbell, Jr., P. G. Mohler, W. E. Whetzel, J. E. Wagoner, S. P. McKenzie, G. L. Ritchie and G. L. McKenzie seven (7) hours time and one-half for the violation of Rule 142½."

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 January 19, 1989, at Cumberland, Maryland, two tank cars derailed in the yard. Carrier called for an outside contractor and also utilized six of 16 members of its wrecking crew. Carrier asserts that it called all regularly assigned wrecking crew members, but that, for various reasons, only six accepted the assignment. The Organization maintains that Carrier's actions violated Rule 142½ of the Agreement, which states:

"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. The number of employees assigned to the Carrier's wrecking crew for purposes of this rule will be the number assigned as of the date of this Agreement."

Based on our review of the record, we find that Second Division Award 12634 is dispositive of the instant claim. As in that case, Carrier offered mere assertions in support of its contentions that it complied with Rule 142½ calling requirements. Absent probative evidence that Carrier did in fact call all 16 wrecking crew members, we must sustain the claim. The ten Claimants are to be compensated, however, at the pro rata, straight time rate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 12th day of January 1994.