

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12640
Docket No. 12368
94-2-91-2-160

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 Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

"1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter 'carrier') violated the provisions of Rules 157 and 158 of the Shop Crafts Agreement and Article VII of the December 4, 1975 National Agreement, between Transportation Communications International Union -- Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carmen W. L. Bowery, P. J. Curran, D. E. Grissom, S. S. Harmon, L. E. Grayson, M. R. Davis and F. Lavenia (hereinafter 'claimants') when the carrier failed to call three (3) of the seven (7) claimants for a twenty-nine (29) car derailment, and further, did not allow the four (4) claimants that were called to remain at the derailment until it was completely rerailed.

2. That, accordingly, the claimants are entitled to be compensated at the applicable straight time rate as follows:

Claimant Bowery-30 Hours	Claimant Curran-30 Hours
Claimant Grissom-29 Hours	Claimant Harmon-37½ Hours
Claimant Grayson-58 3/4 Hours	Claimant Davis-89½ Hours
Claimant Lavenia-50 Hours"	

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 29, 1988, at approximately 9:00 A.M., CSX Train R-300 derailed with 29 cars near Virginia State Farm, milepost 25. At 10:00 A.M., Carrier called Hulcher Rerail Service, an outside wrecking contractor, for equipment and a ground force of ten men. At about 11:00 A.M., Carrier called a wrecking crew from Clifton Forge, Virginia, which is located 150 miles from the derailment site. The Clifton Forge wreck crew arrived at Virginia State Farm at 8:30 P.M. At 3:30 P.M. Carrier called four out of 11 assigned wrecking crew members from Richmond, Virginia, which is only 30 miles away from the derailment site. The Organization contends that the Richmond crew was the most reasonably accessible to the derailment.

The four Richmond wrecking crew members worked on the derailment until 5:00 P.M. The Organization notes that the outside contractor continued working to clear the derailment until 11:00 A.M. on December 1, 1988.

The Organization contends that Carrier violated the service rights of the Claimants and the provisions of Rules 157 and 158 of the Agreement and Article VII of the December 4, 1975 National Agreement by not allowing the Claimants who were called to the derailment to stay and complete work on the derailment with the contractor and, further, that Carrier failed to call all available members of the Richmond wrecking crew to the derailment.

Carrier argues that there is no Rule or Agreement provision which would prohibit it from assigning one wrecking crew to work with a contractor and then calling in an additional wrecking crew, or portion thereof, to augment forces.

Carrier asserts that it elected to accomplish the work in the most expedient manner and did not violate the Agreement in doing so.

We concur with the Carrier's view. As the moving party, the Organization shoulders the burden of proving the elements of its claim. The Rules cited herein only require that a regularly assigned crew accompany a wrecking outfit when it is called to derailments outside of yard limits. Carrier did this in the instant case. The Organization failed to cite any Rule or Agreement violation which would prevent Carrier from augmenting its wrecking force or from assigning forces as it did in this

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situation. See Second Division Award 10972. Accordingly, the claim must be denied.

A W A R D

Claim denied.

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.