

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12735
Docket No. 12557
94-2-92-2-75

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman 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 violated Rule 142 1/2 of the controlling Agreement as amended, on March 13, 1991 whenever it failed to call the Cumberland, Maryland Tool Car Crew to work with Hulcher Contractor at Sandpatch, Pennsylvania.
2. That the Carrier be ordered to recompense Claimants listed below in the appropriate amounts as listed below:

CLAIMANT	HOURS @ TIME & 1/2	HOURS @ DOUBLE-TIME
G.L. MCKENZIE	13	16
H.K. WINTERS	13	16
T.C. BISHOP	13	16
W.E. WHETZEL	13	16
P.G. MOHLER	13	16
W.E. BISHOP, JR.	24	8
G.L. RITCHIE	13	16
C.R. ENGELBACH	13	16
M.D. ROBERTSON	13	16
W.C. EMERICK	13	16"

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

There is no dispute on the background facts in the case at bar. Beginning on March 13, 1991, until completed on March 15, 1991, the Carrier utilized the services of six Carmen at the site of a derailment. The Carrier experienced a partial train derailment that required the wreck crew and the services of an outside contractor.

The claim of the Organization is that Carrier violated Rule 142 1/2 in that the Rule requires that when the Carrier utilizes the equipment of an outside contractor, it must call "a sufficient number of the Carrier's assigned wrecking crew...." The central point of the Organization's argument is the basic number of members of the assigned wrecking crew. The Rule states that:

"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."

By letter dated April 30, 1991 the Organization argued that based on the effective date of the Agreement, the Carrier's wrecking crew was established as 16 members. It is the position of the Organization that the Carrier violated the Rule by reducing the crew size and failing to call an additional ten Carmen to perform work with the outside contractor. The Board is confronted with a Rule and probative evidence that indicates a contractual Agreement to a 16 member wreck crew assignment. In the facts at bar the Organization argues that the Carrier violated its contractual obligation by maintaining only three assigned members, while it calls six "sufficient" under the Rule. The Carrier obtained the other three from the "wreck board extra list."

The Carrier denies the claim in that over the years the Agreement Rule no longer fits the wrecking crew assignments. At the time of this derailment, there was remaining one carman contract supervisor, one crane operator and one groundman for a total of three regularly assigned to the wreck equipment. The Carrier argues that in compliance with the Rule it called the three who were regularly assigned to the Carrier's wreck equipment and also three others which "constitutes a sufficient number" in full compliance with the Rule. As the Carrier states it:

"...this is the normal and established called crew in any event surrounding the Carrier's use of this wreck equipment."

After a full and complete review of the Rule and the on-property dispute, the Board finds its attention directed to prior Awards. In three separate decisions this Board found that the Carrier need not call upon relief wrecking crew Carmen. The point of this claim is to provide compensation to Carmen off the extra list who are clearly not covered by the language of the Rule. The Claimants are not members of the assigned wrecking crew. The Board is constrained by prior Awards unless it determines that the Awards are palpably erroneous (Second Division Awards 11702, 11506, 11323). We do not in our review find the Awards to be in error.

In the instant case, the Carrier called all available members of the assigned wrecking crew and they worked the derailment. In prior Awards between these same parties on this property, this Board held that the Rule obligates the Carrier to call all assigned members of the wrecking crew before using an outside contractor, but "does not cover relief wrecking crew carmen inasmuch as they are not designated as members of the Carrier's assigned wrecking crew" (Second Division Awards 9149, 9095, 8679). Due to the fact that it cannot be demonstrated with the existing record of evidence that the Carrier failed to utilize a "sufficient" number of the assigned wrecking crew or that the Claimants were proper claimants, the Claim must be denied.

AWARD

Claim denied.

This Board after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of September 1994.