

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 13383  
Docket No. 13276  
99-2-97-2-48**

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

**(Brotherhood Railway Carmen, Division of  
( Transportation Communications International Union**  
**PARTIES TO DISPUTE: (**  
**(CSX Transportation, Inc. (former Baltimore & Ohio**  
**( Railroad Company)**

**STATEMENT OF CLAIM:**

**“Claim of the Committee of the Union that:**

**1. That the Carrier violated Rule 144½ the controlling Agreement when it did not call Carmen to work with subcontractor on February 6, 1996 at Waverly, West Virginia.**

**2. That the Carrier be ordered to recompense the following Carmen Claimants the following amounts:**

<b><u>Claimant</u></b>	<b><u>No. of Hours @ Time and one-half rate</u></b>
<b>P.V. Rager</b>	<b>Seventeen Hours &amp; Thirty Minutes</b>
<b>R.R. Roberts</b>	<b>Nineteen Hours &amp; Thirty Minutes</b>
<b>M.L. Ward</b>	<b>Twenty-Seven Hours &amp; Thirty Minutes</b>
<b>J.G. Summers</b>	<b>Nineteen Hours &amp; Thirty Minutes</b>
<b>R.E. Dennis</b>	<b>Twenty-One Hours &amp; Fifteen Minutes</b>
<b>T.L. Sprout</b>	<b>Twenty-Four Hours &amp; Forty Five Minutes</b>
<b>C.R. Dean</b>	<b>Twenty-One Hours &amp; Fifteen Minutes”</b>

**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 were given due notice of hearing thereon.

On March 1, 1996 the Organization's Local Chairman, Parkersburg, West Virginia, submitted a claim to the Carrier's General Mechanical Inspector, Cumberland, Maryland. The claim stated that the Carrier had violated Rule 142½ - Wrecking Service. The claim was filed because the Carrier had called an outside contractor, Hulcher Services, Inc. to work a derailment on February 6, 1996 at Waverly, West Virginia, but had failed to also call seven Parkersburg Carmen, listed as Claimants to the instant case, to assist the contractor. All seven Claimants were on the overtime list.

The claim was denied by the Carrier on grounds that the Rule at bar did not apply because there was no assigned wrecking crew at Parkersburg and that the Claimants were not members of any assigned wrecking crew. The Carrier also responded to this claim by challenging the Organization's assertions with respect to past practice and the use of overtime list Carmen for wrecking crew work. Upon further appeal of this claim on property and absent resolution thereof it was docketed before this Board for final adjudication.

The language of the Rule at bar states the following in pertinent part:

**"Rule 142½ Wrecking Service**

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 derailment in the instant case took place at Waverly, West Virginia, which is outside of yard limits. In reviewing the record in this case the Board observes, first of all, that Rule 142½ does not require the Carrier to call Carmen from the overtime list, but only addresses the issue of an assigned wrecking crew list. None of the Claimants were on an assigned wrecking crew list because there was no such list at Parkersburg. This is not in dispute. With respect to past practice the Board cannot find in the record evidence to support the Organization’s position that overtime list Carmen were used for wrecking service. On basis of evidence the Board must conclude that the Organization as moving party in the instant case failed to bear its burden of proof.

The issue of calling Carmen to work a wreck when they are not members of a wrecking crew has been dealt with already on this property by the Board. As stated in Second Division Award 13008 “. . . the issue raised by the Organization (in the instant case) has been resolved many times through previous Awards. . . .” by the Board (See also Second Division Awards 12735, 12873 and 12874 inter alia.). The Award rendered here is but consistent with that precedent.

**AWARD**

Claim denied.

**ORDER**

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 12th day of April 1999.