

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13424

Docket No. 13309

99-2-97-2-81

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

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

**STATEMENT OF CLAIM:**

“Claim of the Committee of the Union that:

1. Claim that the Carrier violated Rule 142 and Rule 142½ of the controlling Agreement when it failed to call and use W. R. Wilson, C. E. Baker, N. M. Leonard, R. G. Barnett, W. Kincer, C. Patton, and E. Clark, Jr. for rerailling duties within the Cincinnati, Ohio Yard limits on July 29, 1996.

2. The Carrier shall now be required to compensate the Carmen named in this claim seven (7) hours at the time and one-half rate of pay (\$168.53) for Monday, July 29, 1996 which they would have received had they been contractually called.”

**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.**

**A claim was filed by the Organization on August 24, 1996 with the Mechanical Superintendent at Jeffersonville, Indiana, on grounds that the Carrier had violated Rules 142 and 142½ on July 29, 1996 when it failed to call and use the Claimants named in the Statement of Claim "...for rerailling duties within yard limits...." Relief requested was for seven hours' pay at the time and one-half rate for each of the Claimants. The claim was denied by the Mechanical Superintendent on grounds that the Mechanical Department at Cincinnati "...does not have equipment required to perform the job...(and an)...outside contractor..." by the name of R. J. Corman was called and performed the work.**

**According to the record a derailment occurred on July 29, 1996 on the Louisville Division, CT Sub-Div., MP OKC110, which is inside the Cincinnati Terminal Yard limits. The derailment consisted of three cars designated as UTLX 49747, ACFX 75988 and ACFX 79928. The Carrier's Wreckmaster worked with the contractor on the rerailling. According to information in the original claim filed by the Local Chairman, the derailment took place at about 10:00 P.M., the contractor was called at approximately 10:30 P.M., its men arrived on the scene about 1:30 A.M., had the cars rerailed by 5:30 A.M., finished the clean up and departed by 6:00 A.M.**

**The two Rules cited state the following, in pertinent part:**

**"Rule 142 - Make-Up Wrecking Crews**

**When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient Carmen will be called to perform the work."**

**"Rule 142½ - Wrecking Service**

**1. 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.

**NOTE:** In determining whether the Carrier's assigned wrecking crew is reasonably accessible to the wreck, it will be assumed that the ground men of the wrecking crew are called at approximately the same time as the contractor is instructed to proceed to the work.

A review of the facts of this case reveals that the derailment occurred within yard limits. The Carrier was within its rights in calling an outside contractor to assist in the rerailment of the three cars. According to information provided by the Organization, the Carrier called one Carman to assist the contractor. In this respect the Local Chairman stated the following when he filed the claim on August 24, 1996: "...the Carrier utilized (only) one member of the regular assigned wrecking crew...." That person was Wreckmaster G. A. Frey, "...who is a dues paying member of Local 6401...(who) worked with the contractor on this derailment...but no other members of the Carrier's assigned wreck crew nor any other Carman were called to perform service...."

The Board observes that under Rule 142 the Carrier has latitude when derailments take place "...within yard limits...(to call)...sufficient Carman to perform the work...." But the Organization complains, in this case, that by calling only one Carman the Carrier violated the Agreement.

When the parties framed their intent in Rule 142 they stated that "...for derailments within yard limits, sufficient Carman will be called to perform the work...", certainly in conjunction with outside contractors if the Carrier so chooses. In this respect, and as a preliminary matter, the Board concludes that the Carrier did not improperly argue, in the instant case, that an outside contractor was called because the Carrier did not have sufficient equipment to rerail the cars on the site in question

because there is no evidentiary showing that the Carrier did, in fact, possess the necessary equipment. Obviously, a second issue here is whether the Carrier called "sufficient" Carman to assist with the work in accordance with the provisions of Rule 142. The Board is in no position to second guess the Carrier on this issue as a general matter. The Board can only take each claim filed under the Rules at bar as it is presented. A review of the fact pattern in the instant case shows that there was not really much work to be done because of the July 29, 1996 derailment of the three cars. By the Organization's own admission, it took only about four and one-half hours to rerail the cars and to do the clean up. In view of this it appears reasonable to conclude, in this instance, that the Carrier did not violate the Agreement by calling only one Carman, under Rule 142, to assist the outside contractor. The Board will rule accordingly.

In accordance with arbitral precedent coming from the Board in Second Division Awards 7744 and 12649 inter alia the Board also finds no conflict between Rules 142 and 142½ that would alter its conclusions here.

**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 16th day of June 1999.