

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13556

Docket No. 13429

00-2-99-2-22

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

(Brotherhood Railway Carmen Division  
(Transportation Communications International Union

**PARTIES TO DISPUTE:** (

(CSX Transportation, Inc. (former Baltimore and Ohio  
( Railroad Company)

**STATEMENT OF CLAIM:**

“Claim of the Committee of the Union that:

1. That the Carrier violated Rule 142 & 142½ of the Agreement when they failed to utilize the assigned wrecking crew or sufficient Carmen to work with an outside contractor (Hulcher) within yard limits.
2. That the Carrier be ordered to compensate Carman: M.S. Loy five (5) hours and forty (40) minutes, S.P. McKenzie five (5) hours and forty (40) minutes, D.L. Bishop ten (10) hours and ten (10) minutes, W.C. Emerick ten (10) hours and ten (10) minutes, J.E. Bierman ten (10) hours and ten (10) minutes, and J.S. Knippenberg ten (10) hours and ten (10) minutes all at the overtime rate of pay 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.**

**On January 24, 1998, nine cars derailed within the yard limits of the Cumberland, Maryland, Terminal. The Carrier called two Carmen to assist an outside contractor that had been called to rerail the cars. The Organization contends that the Carrier failed to call a sufficient number of Carmen to assist the employees of the outside contractor. The Carrier maintains that the Organization failed to prove what a sufficient number of Carmen was in the instant situation.**

**The claim references Rules 142 and 142½. However, because the claim involves work inside yard limits, only Rule 142 is applicable. See, Second Division Award 13528. Rule 142 provides:**

**“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.”**

**In Award 13528, the Board held:**

**“What is lacking in the matter here under review is specific showing that any of the contractor’s employees were engaged in groundsmen’s work which Carmen might have performed. As in Award 13424, the Board cannot ‘second guess’ how the contractor’s employees were utilized.”**

**Upon review of the record in the instant case, we find that the situation presented is identical to that presented in Award 13528. There is no evidence in the record as to whether any of the contractor’s employees were engaged in work that Carmen might have performed. Accordingly, we find, as did the Board in Award 13528, that the Organization failed to carry its burden to prove that a sufficient number of Carmen were not called on the date in question.**

Form 1  
Page 3

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**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 27th day of October, 2000.**