

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13866
Docket No. 13739
05-2-04-2-16

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen Division Transportation
Communications International Union

PARTIES TO DISPUTE: (

(The Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. The Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Side Letter No. 2 when they arbitrarily allowed other than the regularly assigned wrecking crew perform wrecking work at Gardner, Massachusetts on October 4, 2002.
2. That accordingly, the Springfield Terminal Railway Company be required to compensate Ty Jarret and Richard Sibley in the amount of sixteen (16) hours pay at the time and one-half rate. This is the amount they would have earned had the Carrier not violated the Agreement.”

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 October 4, 2002 the Carrier dispatched a mobile crane and did so without using groundmen. The Organization argues that there was a requirement under Side Letter No. 2 to utilize groundmen from Lowell to accompany the mobile crane when in wreck service on the territory where the wreck occurred. As the work was a continuation of wreck service, the Carrier violated the Agreement.

The Carrier maintains that under Rule 30 and Side Letter No. 2, it was required to recognize the negotiated territory for the assignment of employees only when in wrecker service. As this work was not wrecker service, groundmen were not required and there was no recognized territory giving rights to the Claimants.

The Board has carefully read Rule 30 and Side Letter No. 2. The burden of proof for this claim lies squarely with the Organization. They must demonstrate that the work performed was a continuation of wreck service under this Agreement. Rule 30 is clearly titled "Wreck Crew" and its seven provisions all relate to employees in wrecking service. Rule 30.2 specifically states that the Carrier must have "2 groundmen for company owned mobile wreck cranes . . . when used in wreck service." Side Letter No. 2 specifies territories for wrecker crews in wrecker service.

Among other facts, the Organization must prove that the Carrier used the mobile crane for a continuation of wrecker service. The Organization asserted that the "picking of wreck cars by the mobile crane and the related repairing of these wreck cars is an extension of wrecking service." The Carrier denied this was an extension of wrecking service, arguing that when the mobile crane is used to re-rail at a derailment, it is in wrecking service. However, when, as here, it is used to "load equipment and perform car repairs," it is not in wrecking service.

There is insufficient evidence of record that the repairing of cars was wrecking service. There is no evidence in this record of the exact work performed at the site which made it wrecking service, or that the work performed on the line

was not proper car repair. The Organization has provided no evidence that the work performed was a continuation of wrecking service. It has neither provided background facts, nor employee statements that repair work performed later at the site was clearly wreck work. There is nothing in this record persuasively rebutting the Carrier's argument that wrecking service is the use of the mobile crane for re-railing train cars and that the mobile crane was not used on this date for wreck service.

The Board must find that since proof of a continuation of wreck service is insufficient, then the use of groundmen and the requirement of proper territory for the use of those groundmen was not established. This record does not prove a violation of Side Letter No. 2. The claim must be denied.

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 7th day of September 2005.