

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14012
Docket No. 13894
10-2-NRAB-00002-090007**

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood Railway Carmen Division of TCIU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the Employees’:

- 1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 2.1 and 30.2, when they arbitrarily did not call the entire wrecking crew to a derailment on the SLR Railroad in Auburn, ME.**
- 2. That, accordingly, the Springfield Terminal Railway Company be required to compensate Carman Timothy Locke of eight (8) hours at the overtime rate of pay. This is the amount he 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 23, 2007, the Carrier called a Groundman for Rigby Yard to go with the RC-75 Mobile Crane from Waterville, Maine. R. Nickless was the Groundman and the Crane Operator was T. Leblanc. In addition the Carrier sent Supervisors J. Austin and T. Witham, all of whom traveled to Auburn, Maine, to assist in the re-railing of railcar GATX 56021 on the St. Lawrence & Atlantic Railroad (SLR).

It is the Organization's position that the Carrier violated Rules 2.1(m) and 30.2, which govern re-railing and wrecking work, as well as the composition of a wreck crew. It argued that the Carrier should have sent two Groundmen rather than one, because the Agreement requires that a wreck crew will be comprised of one Operator and two Groundmen. It further argues that Supervisors are suppose to supervise and are not allowed to perform work that accrues to Carmen by Agreement and that on the involved date Supervisors set blocking, handled cables, unhooked and hooked the car. Additionally, it states that the Supervisors put away blocking and cables. Because of the aforementioned violation it requested that the claim be sustained as presented.

It is the position of the Carrier that it did not violate the Agreement. It argues that there is no contractual basis for the claim because the Carrier performed "contract work" for a foreign Carrier and the ST/BRCD Agreement pertains to the Rules and working conditions of the ST and not the SLR. Consequently, its employees have no claim to the work in question. Additionally, it argued that if there was any validity to the claim, the Claimant was an improper Claimant because he worked eight hours on the same date. It concluded that the claim should remain denied.

The Board has been presented an interesting issue. The question at dispute is: Does the Agreement follow the employees with all of its protective benefits when they work on a foreign property? There is no argument that if the Carrier had sent a crew of management employees to perform the re-railing on the date in question on the SLR Railroad the Organization on the ST would have no legitimate complaint. However, in this instance a review of the record reveals that the Carrier determined that it needed a wreck crew of Carmen to perform the re-railing work on the SLR. After having made that decision, it had a responsibility to adhere to

Rule 30.2 to have a full crew, which consists of one Operator and two Groundmen. Because it did not have a full crew and allowed Supervisors to perform work that another Carman could have performed, it violated the Agreement. The record further indicates that payroll records show that the Claimant worked eight hours on the date claimed (October 23, 2008). There is nothing in the record which shows whether the eight hours the Claimant worked was or was not in conflict with the time period that the crew re-railed the car on the SLR. Lacking any proof as to whether the Claimant was actually available for the disputed work, we are unable to award any compensation. To reiterate, the Board finds that in this unique situation, once the Carrier determined that it was going to use Agreement covered employees to perform "outside contract work" it was mandated to follow all Rules of the Agreement. In this instance, it failed to do so. The Board finds and holds that the Agreement was violated, but will not award any compensation because there is no proof that the Claimant was available for the assignment.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 14th day of January 2010.