Award No. 3365
Docket No. 3115
2-B&O-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the provisions of the controlling agreement when on March 31 and April 1, 1957, seven (7) Cowen, West Virginia Car Department employes were used to man the Grafton, West Virginia Relief Train while rerailing the Cowen, West Virginia Relief Derrick No. 55 at Cowen, West Virginia.

2. That accordingly, the Carrier be ordered to additionally compensate each member of the Grafton, West Virginia Wrecking Crew for the aforesaid violation, as follows:

	MARCH 31		APRIL 1	
	PRORATA	OVERTIME	PRORATA	OVERTIME
R. H. Henderson	—	4½	8½	14
W. L. Wolfe	—	4½	—	22½
J. D. Powell	8	4½	8½	14
F. W. McCracken	—	4½	—	22½
C. F. Bartlett	8	4½	8	16
J. E. Breedlove	8	16	8	—
P. D. Poling	8	12½	8	6½

EMPLOYES' STATEMENT OF FACTS: At 8:30 P. M. on March 31, 1957 Derrick Car No. 55 of the Cowen, West Virginia relief train of the Baltimore and Ohio Railroad, hereinafter referred to as the carrier, derailed at Cowen, West Virginia.

The line of argumentation adopted by the committee in support of its position in this claim is somewhat new and unusual.

For example, during the year 1957, in this same territory, when the Gassaway crane overturned when it was assigned to the Gassaway wreck train, the Fairmont crane, with operator only, was used with the regularly assigned Gassaway wreck crew to do the rerailing and no claims were made or were forthcoming from the wreck crew at Fairmont.

It is the position of the carrier in this case that this claim is not supported under an application of any rule of the working agreement.

The carrier respectfully requests that this Division so hold and that this claim in its entirety be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Under circumstances identical in all pertinent respects to those in the instant case, and involving the same contract language, we have consistently held the agreement was violated because the carrier failed to call a sufficient number of the regularly assigned wrecking crew to accompany the outfit. Awards 857, 2185, 2404. Award No. 3254 is not in point since the basis for denial in that case cannot successfully be asserted in the instant matter.

We find that Rule 142 of the subject agreement required the carrier to call the claimant members of the Grafton wrecking crew to accompany their outfit to the scene of the derailment to perform work which was in fact performed by an equal number of carmen in the Cowen wrecking crew. As to the compensation due, we find the claimants are entitled to be paid the difference between that which they earned and that which they would have earned had they been called to accompany the Grafton outfit (Award No. 857), provided the additional compensation as thus computed for each claimant does not exceed the amount requested for him in the above claim.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1959.