

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to dispute: { System Federation No. 99, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Carmen)
{ Illinois Central Gulf Railroad

Dispute: Claim of Employees:

1. That under the current agreement other than Carmen were improperly used to augment the regular assigned wrecking crew at a wreck near Cecilia, Kentucky on August 16, 17 and 18, 1971.
2. That accordingly the Illinois Central Railroad be ordered to compensate Carmen F. J. Kaufman and R. E. Seay, eighteen (18) hours each at the overtime rate of pay for August 16, 17 and 18, 1971.

Findings:

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

That 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 waived right of appearance at hearing thereon.

The dispute in this matter involves the alleged use of section laborers performing carmen's work assisting a wrecking crew at a derailment. Petitioner asserts that Carrier violated Rule 130, which provides:

"Regular assigned wrecking crews, excluding engineers, will be composed of carmen and will be paid for such service under Rule 12."

While conceding that Maintenance of Way Employees have been used to bring ties to wrecks, the Organization maintains that in this instance section hands performed carmen's work by placing ties and blocks for outriggers at the derailment. Petitioner cites a number of Awards of this Division dealing with the issue of carmen's work at wrecks, and we do not find fault with their reasoning. However, we do not believe that these prior awards are relevant in this dispute. For example, in Award 3560 dealing with a wrecking assignment we said: "...It is unquestioned that the members of the section crew performed work contractually assigned to carmen in violation of Rule 119 (a) of the applicable agreement...." In the instant dispute there is a serious disagreement as to the facts of the work performed by

the section laborers. The Carrier denies that these men performed any carmen's work at the wreck, contrary to the Organization's contention. As evidence, the record contains a statement (unsworn and not notarized) by the five carmen who worked at the site of the wreck indicating that the section laborers had performed carmen's work and also a statement by the two section laborers that they did not perform such work. There is also a similar unsworn statement by the foreman indicating that he did not authorize the section laborers to perform carmen's work at the wreck and that insofar as he was aware of the situation they had not performed such work.

Since the only facts with respect to this conflict are described above and since they are in doubt, this Board is faced with a dilemma. We cannot resolve credibility issues and the "facts" are unsupported except by conflicting statements. As we have frequently held in the past, since we cannot resolve the fundamental evidentiary issue, the claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

TEST: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of November, 1973.