

(Advance copy. The usual printed copies will be sent later.)

rm 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No: 6596
Docket No. 6379
2-PT-CM-'73

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: { System Federation No. 18, Railway Employees'
 { Department, AFL - CIO
 { (Carmen)
 {
 { Portland Terminal Company

Dispute: Claim of Employees:

1. That the Portland Terminal Company violated the provisions of the current agreement, namely, Rule 97, on October 21, 22, 23, 24, 25, 26, 27, 28 and 29, 1971, and on November 1, 2, 3 and 4, 1971, while engaged in wrecking service at Clinton, Maine, on the Portland to Bangor Main-Line.
2. That accordingly, the Portland Terminal Company be ordered to additionally compensate the entire wreck crew, who were not used on this assignment, namely, Carmen R. E. Palmer, E. A. Dunham, H. L. Harriman, G. H. Colton, F.G. Ham, L. M. Dorr, G. W. Rounds, and M. L. Campbell, for all time that the Rigby wreck outfit was engaged in wrecking service at Clinton, Maine, on the foregoing dates, at the carmen's applicable rates of pay under Rules 7 and 4 (f) of 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 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.

Subsequent to a derailment at Clinton, Maine the Waterville wrecking crew was called to handle the emergency. In addition the Bangor wrecking crew was called to assist. On October 21, the crane from the Bangor wrecking crew was damaged to the extent that it was sent to the shop for repairs. At that time the Carrier called the Rigby crane and the operator of the Rigby crane to the scene of the derailment. No other members of the Rigby wrecking crew were called for services.

It is the position of the organization that the Carrier violated the agreement in not calling the entire Rigby wrecking crew. The alleged violation is based on Rule 97, which reads as follows:

"RULE 97 - MAKE UP OF WRECKING CREWS - When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

As we apply Rule 97 to the instant matter, the key words are, "When wrecking crews are called . . . the regularly assigned crew will accompany the outfit." The Carrier alleged that it is within its prerogative to assign the pieces of equipment it wishes "in the manner it deems is in the best interest of the company." They further allege that there is no rule in the agreement that assigns a particular crane to a particular crew. Nonetheless, the Carrier is contractually bound by Rule 97 to utilize the regularly assigned crew members on equipment it utilizes outside the yard limits.

In the instant matter there is no basis for the Carrier calling the entire Rigby wrecking crew to operate the crane. It is the opinion of this Board, however, that a sufficient number of employees necessary to operate the crane should have been utilized from the Rigby wrecking crew.

The Carrier has argued to this Board that the utilization of the Rigby crane at Clinton was utilizing of same on a property over which the claimant organization has no contractual rights. The Carrier cited a substantial number of awards to substantiate its position in this regard. A review of the record reveals that this issue was presented for the first time at the hearing before this Board. It is axiomatic that it is incumbent upon a party urging such a position that the same must be presented at some time prior to the appellate level.

It is the opinion of this Board that the Carrier shall compensate under Rules 7 and 4(f) the members of the Rigby wrecking crew which normally have been called to operate the equipment utilized at the Clinton derailment.

A W A R D

Claim sustained in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November, 1973.