

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

Parties to Dispute: (System Federation No. 96, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(R. C. Haldeman, Trustee of the Property of
(Lehigh Valley Railroad Company, Debtor

Dispute: Claim of Employes:

That the Carrier violated the current agreement when Carman Robert P. Alexander was not called for wrecking service on various dates between March 4 and March 19, 1973 and April 23 and 24, 1973.

That accordingly the Carrier be ordered to compensate the aforesaid employee for the number of hours he was deprived of working on the various dates between March 4 and March 19, 1973 at his applicable rate of pay, and that he be compensated 13 1/2 hours at his applicable time and one-half rate of pay and 2 hours at his applicable double time rate of pay for April 23 and 24, 1973.

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.

Claimant, prior to claim dates in question, was assigned to a Carman position in the Car Department. The duties of that assignment, as specified by bulletin, included: "In Relief of Wreckmaster as required" with assigned hours of 7:00 a.m. to 3:30 p.m.

Claimant subsequently bid on and was awarded an assignment to Carpenter in the Locomotive Shop. The duties of that assignment, as specified by bulletin, included: "duties of carpenter on diesel locomotives and other assigned duties" with assigned hours from 7:00 a.m. to 3:00 p.m.

On the claim dates in question when Claimant was assigned to the Carpenter position a wrecking crew was used without Claimant.

Carrier denied claims contending that when Claimant was assigned the Carpenter position in the Locomotive Shop he bid off the wreck crew and thus relinquished his position as relief wreckmaster.

The Organization asserts that a Wreckmaster's job is separate from a 40-hour week assignment, and because of the intermittent nature of the duties (during wrecks, derailments, etc.) Claimant did not relinquish his right to be called even after his assignment as Carpenter in the Locomotive Shop.

Carrier relies on Award No. 3898 of this Division in support of its position. That Award involved a Claimant who had been a terminal carman and also a member of the regular wrecking crew. After his status changed from terminal carman to road carman, Claimant contended that he still retained his membership on the regular wrecking crew. In denying the claim, the Board held, in pertinent part, as follows:

"Second, accessibility of the employe for wrecking crew service would seem to be a condition of his continued status as such. Thus, if a change of basic position were to develop a conflict so that continued availability for wreck crew duty was not longer possible his status as such would have to be discontinued.

It would thus appear that although the wreck member has a status as such, it is one which assumes the continuation of the basic position which the employe held at the time he became a member of the wreck crew. Although the question is not here presented it is probably that there is enough status as wreck crew member so as to prevent arbitrary termination as a member of the wreck crew where the employe retains his primary status of terminal carman.

We must conclude that Claimant's status as a wreck crew member was tied to his position as terminal carman. When he exercised his seniority as road carman he lost his right to demand that he be called out on wreck service."

The Organization cites Award Nos. 6438 and 5807 as support for its position. The pertinent portions of Award 6438 are quoted as follows:

"The Carrier relies in part on Second Division Awards 2560 and 3898. In both of those cases, however, the question of the availability of the Claimants for wrecking crew service was the central issue; in this case there is no evidence that Claimant was either inaccessible or unavailable for wrecking crew service. Award 2560 affirms the applicability of seniority for wrecking crew assignments."

* * *

"We can find no support for Carrier's position in either the Agreement or Board decisions. Wrecking crew assignments, even though intermittent, are regular assignments, in the context of the agreement (See Rules 152 and 153). We shall reaffirm the principles enunciated in our conclusion in Second Division Award No. 5807, which closely parallels this case:

'Rule 18, of course contains no exceptions and, thus, on its face, does not open the way to barring any qualified Carman from a wrecking assignment. Nevertheless, as indicated by Awards 3898 and others, this Rule must be applied reasonably. As stated there, 'if a change of basic position were to develop a conflict so that continued availability for wreck crew duty was no longer possible his status as such would have to be discontinued.' But when men are reasonably available, there is no contractual basis for excluding them from a wreck crew assignment, in our estimation, merely because of possible difficulties in replacing them on occasion. Rather, such problems can best be resolved by mutual agreement of the parties as, evidently, has been done at other locations.'

The Board is of the opinion that Award Nos. 6438 and 5807 enunciate the prevailing and better reasoned view. Moreover, Award No. 3898 was bottomed on the question of availability. There the Board found that he was not available by virtue of his position as a road carman. There is, however, nothing in this record indicating that Claimant was not available.

A W A R D

Claim is sustained.

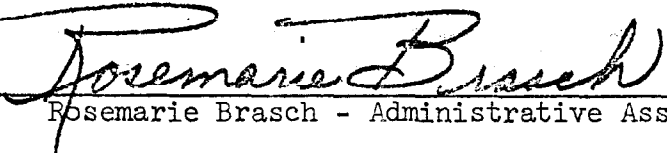
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Award No. 6830
Docket No. 6741
2-LV-CM-'75

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of March, 1975.