

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. 6, Railway Employees'  
{ Department A.F.L. - C.I.O. - Carmen  
{  
{ Toledo, Peoria & Western Railroad Company

Dispute: Claim of Employees:

- (1) That under the terms of the applicable Agreement the Carrier improperly denied Carmen S. Hatcher, N. Griffith, J. Whetstone, J. Sargent, T. Tracy, W. Howell, W. Brown, Sr., B. Tracey, C. Donigian, J. Young, R. Caughey and J. J. Jungers 307 hours pay at the Carmen's straight time rate of pay for work performed by Hulcher Emergency Service employees.
- (2) That accordingly, the Carrier be ordered to compensate the aforesaid Carmen for 307 hours pay at the straight time rate, equally divided among claimants.

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.

The question to be determined in this dispute is whether Carrier was correct in its application of the provisions of Rule 114 when it deducted the number of hours worked by the TP&W wrecking crew from the number of hours worked by an outside wrecking crew (independent contractor) called in to assist in a derailment.

The essential facts are not in dispute. A derailment occurred at Reed City, Illinois. On December 26, 27 and 28, 1973 Carrier employed the Hulcher Wrecking Service to assist in clearing up and rerailling cars. The TP&W wrecking crew was used along with the Hulcher crew. The Hulcher crew worked a total of 307 hours; the TP&W crew worked a total of 104 hours.

The Organization contends that under Rule 114 (5), Carrier is obligated to pay for 307 hours. Carrier asserts that it is entitled under the rule to deduct the 104 hours worked by the TP&W crew and pay for 203 hours.

Rule 114 (5) reads:

"In the event of a major wreck or derailment on the TP&W, the TP&W has the right to rent or lease wrecking outfits complete with wrecking crews with the understanding that an equal number of TPW Carmen will be compensated the straight time rate of pay for an equal number of hours as spent in actual wrecking service by the crew of the leased or rented wrecking outfit."

The rule is clear and unambiguous. There is no right, as Carrier asserts, to have the hours worked by the TP&W crew deducted from the hours worked by the outside crew. To hold otherwise would subvert the purpose of the rule. Under the circumstances, prior interpretations are without merit.

A W A R D

Claim sustained.

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 August, 1975.