Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7926
SECOND DIVISION Docket No. 7818
2-B&O-CM-'79

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

1. That under the controlling Agreement, the provisions of the December 4, 1975 agreement was violated on December 21, 1976 when the Carrier failed to call two (2) members of the assigned wrecking crew to a derailment at Hayden, Indiana.

2. That accordingly, the Carrier be ordered to compensate Carmen C. L. Hicks and R. E. Clark for ten (10) hours pay at the straight time rate.

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.

Claimants allege deprivation of work they assert accrued to them due to a derailment.

The undisputed facts in the instant case are as follows: At approximately 6:50 AM, Tuesday, December 21, 1976, one end of an empty tank car derailed at Hayden, Indiana. Following derailment, one Assistant Car Foreman and four carmen then on duty and assigned to the repair track at Washington, Indiana, were instructed to take the boom equipped wreck truck, carrying among other items, tools, re-railers, block and tackle and proceed to Hayden, Indiana to rerail the car. The crew arrived at Hayden, Indiana at 10:00 AM, December 21, 1976, where they awaited the arrival of an off-track mobil crane provided by an independent contractor. Delayed by mechanical problems enroute to Hayden, Indiana, the crane arrived at the site of the derailment at 12:01 PM, December 21, 1976. The carmen proceeded to perform all ground service in connection with the clearing of the derailment and

after retracking the tank car at 12:45 PM, departed Hayden, Indiana at 1:00 PM. After working two (2) cars which had been set out on the line of road at Huron and Logootee, Indiana, the crew returned to Washington, Indiana with the truck and were relieved at 5:15 PM.

The Organization contends that Carrier violated Article VII of an Agreement dated December 4, 1975, which article is entitled, "Wrecking Service Agreement", when the Carrier on December 21, 1976 in dispatching the crew of one foreman and four carmen to the premises of the derailment at Hayden, Indiana, failed to send two other carmen whom the Organization asserts, are members of a regularly assigned wrecking crew.

In support of their contention regarding the existence of a wrecking crew at Washington, Indiana, the Organization cites two letters written by two Carrier officials under dates of June 2, 1976 and July 29, 1976 both of which acknowledged and made reference to the regularly assigned wrecking crew. The Organization observes that it first learned of a change in Carrier's position regarding the status of the wrecking crew at Washington, Indiana, when in response to a time claim arising from an incident which occurred October 20, 1976, the Carrier's Car Department Manager in a letter dated December 22, 1976, admitted he had erred in his letter of July 29, 1976 to the Organization, by having acknowledged the existence of said wrecking crew. In the latter correspondence, dated December 22, 1976, the Car Department Manager related that since there was no wrecking "outfit" assigned at Washington, Indiana there was therefore no assigned wrecking crew. It is the Organization's position that a wreck outfit does exist at Washington, Indiana since it is their contention a wreck outfit consists of the necessary tools to perform rerailing service. Thus, contends the Organization, it matters not that the derrick was removed from Washington, Indiana by the Carrier in 1972, as the remaining equipment, consisting of a tool car, a block car, a truck car and cars to haul panels, is rerailing equipment which, in fact, constitutes a wreck outfit. Furthermore, the Organization takes exception to the Carrier's position regarding the absence of a wreck outfit in its letter dated December 22, 1976, contending that Carrier cannot by a stroke of the pen unilaterally change a long standing practice and policy.

In addition, the Organization asserts that wrecking crew assignments are subject to the bulletin and abolishment provisions of the Controlling Agreement, citing in support of this position, Second Division Award 7630 and Article III, Rule 24(h) of the National Agreement dated June 5, 1962. The Organization notes the wrecking crew assignments at Washington, Indiana are indeed bulletined positions which have never been abolished. Thus, the Organization argues, that because the National Agreement of December 4, 1975 prohibited the further reduction of wrecking crew assignments and since such wrecking crew assignments were never formally abolished by posted notice, that therefore, the remaining employees assigned to wrecking crew positions at Washington, Indiana indeed constitute a regularly assigned wrecking crew. In keeping with the position that a regularly assigned

wrecking crew exists at Washington, Indiana, the Organization alleges that Carrier, in addition to violating the December 4, 1975 Agreement, also violated Wrecking Rules 141 and 142 as set forth below, when they failed to call out the Claimants for the rerailment work.

> "RULE 141. WRECKING CREWS Regularly assigned wrecking crews will be composed of carmen, where sufficient men are available, and will be paid for such service under Rule 7. Meals and lodging will be provided by the Company while crews are on duty in wrecking service.
>
> When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification."
>
> "RULE 142. MAKE-UP WRECKING CREWS When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

Finally, the Organization asserts, that an earlier settlement they were party to with this same Carrier, concerning the same basic issue, is not inconsistent with their position in the instant case. That in the other case in question, the Organization took the position that wrecking crew work performed by employees at Akron, Ohio was misassigned, as there was no wrecking crew at Akron, Ohio, but there was a wrecking crew at Willard, Ohio.

The Carrier acknowledges that prior to 1972, a wrecking derrick and an assigned wrecking crew were maintained at Washington, Indiana. However, in 1972, the wrecking derrick was removed from Washington, Indiana and reassigned to another location. The Carrier takes the position that a "wreck derrick" and a "wreck outfit" are one in the same thing and so concludes that where there is no derrick there is also no wreck outfit. In support of its position, Carrier cites Second Division Award 7085 as representative of other decisions which have defined the term "wrecking outfit". This award is quoted in relevant part as follows:

> "The Carmen's Organization contends that the Carrier in effect recruited a wrecking engineer from outside the Carmen's craft, when the BMWE crane operator was utilized to operate the M of W Crane. The Organization in effect considers the X-1859 crane to be a derrick, and asserts that a derrick was used in picking up the Allouez yard derailment, (Employes' Submission pp. 4, 10, 11). We find to the contrary on this contention, X-1859 is a 30-ton crane, it is not a 150-ton derrick, and is not a wrecking derrick." (Emphasis Added.)

The Carrier also cites Second Division Awards 6498 and 5404 as further supporting its contention that a derrick along with tool cars constitutes an "outfit", but that in situations involving only tool cars and no derrick there is no outfit. Award 5404 reads in relevant part as follows:

> "Petitioner asserts here that 'the outfit' was called by Carrier, whereas the record reveals that only the Wreckmaster and two crew members, with skids, jacks and blocks, were dispatched to the scene of derailment by Carrier's truck, and that neither the derrick or relief train were called or needed. Under the provisions of Rules like Rule 111, this Board previously has determined that a derrick is an essential part of 'the outfit' and that trucks sent in lieu thereof do not become 'the outfit'. Award 4821." (Emphasis Added.)

The Carrier argues that where no wreck outfit exists, there can be no assigned wrecking crew, asserting that in actuality, the wrecking rules presuppose the existence of a wreck outfit before a wreck crew may even be said to exist. Carrier cites in relevant part Second Division Award 4821, which Carrier maintains, established the linkage between the wreck outfit and the wrecking crew:

> "That conclusion is particularly inescapable under provisions which, like Rule 88, require derrick operators and firemen to be regularly assigned as members of the wrecking crew, and provide that the entire crew must accompany the outfit when called for wrecks or derailments outside of yard limits. Obviously by 'outfit' the parties meant the derrick; for otherwise it makes no sense to require that the derrick operator and fireman be sent in all cases; and it certainly cannot have been intended that even if no derrick was needed, all wrecks or derailments outside of yard limits must be handled by the crew especially set up to handle the derrick, including the derrick operator and fireman.**** " (Emphasis Added.)

Thus, in the instant case, the Carrier asserts that since the derrick was removed from the Washington, Indiana location in 1972, there has been no wreck outfit at said location and therefore there has been no regularly assigned wrecking crew. Inasmuch as Article VII of the December 4, 1975 Agreement is applicable only to assigned wrecking crews, the Carrier argues it has not violated said provision of the aforementioned Article because of the fact there has been no assigned wrecking crew at Washington, Indiana since 1972, three years prior to the 1975 Agreement. Therefore, the Carrier concludes Article VII of the December 4, 1975 Agreement is not applicable in the instant case.

In support of the contention that a wrecking crew no longer exists at Washington, Indiana, Carrier notes that since 1972, some of the former wrecking crew have left the service of the Carrier but that their wrecking crew positions have not subsequently been assigned, advertised or awarded. In addition, ever since 1972 when carmen have been called for rerailing work at Washington, Indiana, the item of equipment primarily utilized is a boom equipped truck, which Carrier forcefully states, is in no way comparable to a wreck derrick.

As to the allegation that Carrier violated Shop Crafts Agreement Rules 141 and 142 respectively titled "Wrecking Crews" and Make-up Wrecking Crews", as cited above, Carrier takes the position that neither of the two rules are applicable, since no wrecking crew exists at Washington, Indiana; but regardless of this, the Carrier argues that the Organization has raised the issue for the first time in the instant case before the Board and in so doing has interjected new argument.

Finally, the Carrier asserts, the Organization did take a position in the Akron and Willard, Ohio negotiated settlement that is diametrically opposite to the position being taken in the instant case. Carrier states the Organization took the position that it was necessary for the Willard, Ohio assigned wrecking crew to be called for a derailment at Akron Junction, Ohio rather than the carmen regularly assigned at Akron, Ohio who had "by long-standing practice" been utilized to perform wrecking work in conjunction with outside contractors. Settlement of that claim, Carrier contends, was made on the basis of recognizing that the term "assigned wrecking crew" as used in Article VII of the December 4, 1975 Agreement refers to the assigned wrecking crew at a location where a wrecking outfit is assigned.

In reviewing the record, the Board finds the logic of Carrier's argument appealing but not persuasive. Even if this Board were to accept the following fundamentally core argument Carrier has sequentially advanced that:

(1) A derrick of the 150 ton steam variety is the central piece of equipment comprising a "wreck outfit" and without a derrick there can be no "wreck outfit"; and

(2) A "wreck outfit" presupposes a "wreck crew" and the two are so inextricably bound together, that where no wreck outfit exists there can be no wreck crew;

nevertheless, there still remains the fact that wreck crew assignments are bulletined positions and as such are subject to the abolishment procedures set forth in Article III, Rule 24(h) of the June 5, 1962 National Agreement. The Board notes that such wrecking crew positions apparently were never

formally abolished at Washington, Indiana in accordance with Article III, Rule 24(h) either at the time the derrick was reassigned in 1972 nor any time subsequent to the removal of the derrick. This failure to so abolish the wrecking crew positions, the Board believes, accounts in some substantial part for the confusion on the part of two minor Carrier officials stationed in Washington, Indiana in believing that a regularly assigned wrecking crew did exist at Washington, Indiana as per their letters to the Organization under dates of June 2, and July 29, 1976 respectively. The Board agrees with Carrier's position that said letters are in no way binding on the Carrier, but the Board does lend some significance to the fact that a wrecking crew was presumed to have existed four years after the removal of the derrick from the property, notwithstanding the fact, that vacated wrecking crew positions due to employee attrition were never subsequently filled.

The Board finds that the mere removal of the derrick from Washington, Indiana in the instant case, did not simultaneously automatically cause the elimination of the wrecking crew positions. Abolition of said assignments could have been accomplished by complying with Article III, Rule 24(h) of the June 5, 1962 National Agreement. In so finding, the Board is in agreement with the Organization's position that a wrecking crew does exist at Washington, Indiana. Further, the Board rejects Carrier's position that the Organization's interjection of Rule 141 and 142 and compliance by Carrier thereof, constitute new argument, as the Board is cognizant of the fact that said argument could not have been raised previously, with any relevancy, given Carrier's position that a wrecking crew did not exist at Washington, Indiana. Thus, having determined the existence of a wrecking crew and the relevancy of Rules 141 and 142, the Board finds that the Carrier, under the prevailing situational circumstances in the instant case, was obligated to comply with said Wrecking Rules 141 and 142.

Had the Carrier, in the instant case, felt compelled to comply with the provisions of Rules 141 and 142 at the time of the derailment on December 21, 1976, Carrier would have had to make a special effort to contact the two Claimants, as one Claimant was scheduled to work the following shift (second shift) and one Claimant was on his day off, prior to dispatching the crew. This the Carrier was obligated to do but did not do.

Finally, the Board does not find the Organization's position assumed in the instant case and that assumed in a prior instance regarding the wrecking crew at Willard, Ohio as being either inconsistent or prejudicial to their position in this matter.

Based on the foregoing analysis and determinations, the Board rules to sustain the claim.

A W A R D

The Board orders that each of the two Claimants be compensated for ten (10) hours pay at the straight time rate.

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 16th day of May, 1979.

CARRIER MEMBERS' DISSENT TO AWARD NO. 7926 -
DOCKET NO. 7818 - REFEREE LARNEY

The decision reached by the majority in Award No. 7926 is palpably erroneous and cannot be accepted as a precedential Award.

Regardless of the fancy rhetorical footwork displayed by the author of the Award and adopted by the majority of the Division, the fact remains that there is no wrecking crew - as such - at Washington, Indiana, and there has not been a wrecking crew at that location since the removal of the wreck derrick and attendant equipment in 1972.

The majority has apparently accepted the fact and premise that:

> "(1) A derrick of the 150 ton steam variety is the central piece of equipment comprising a 'wreck outfit' and without a derrick there can be no 'wreck outfit'; and
>
> "(2) A 'wreck outfit' presupposes a 'wreck crew' and the two are so inextricably bound together, that where no wreck outfit exists there can be no wreck crew;"

However, they go on to say:

> "nevertheless, there still remains the fact that wreck crew assignments are bulletined positions and as such are subject to the abolishment procedures set forth in Article III, Rule 24(h) of the June 5, 1962 National Agreement. The Board notes that such wrecking crew positions apparently were never formally abolished at Washington, Indiana in accordance with Article III, Rule 24(h) either at the time the derrick was reassigned in 1972 nor any time subsequent to the removal of the derrick.
> * * *
>
> "The Board finds that the mere removal of the derrick from Washington, Indiana in the instant case, did not simultaneously automatically cause the elimination of the wrecking crew positions. Abolition of said assignments could have been accomplished by complying with Article III, Rule 24(h) of the June 5, 1962 National Agreement. In so finding, the Board is in agreement with the Organization's position that a wrecking crew does exist at Washington, Indiana. * * *."

Yet, nowhere in the handling of this case on the property is there any reference to be found relative to either Rule 24 or Article III of the June 5, 1962 National Agreement. These two items appeared for the first time during the panel discussion of this case when the labor member of the panel made reference to them.

The "usual manner" of handling claims and grievances as mandated by both Section 3, First (i) of the Railway Labor Act and Circular No. 1 of this Board requires - no, demands - that the applicable Rules of the Agreement which are allegedly violated be clearly and specifically identified during the handling of the claim or grievance on the property. This Board cannot properly consider any citation of Rules which were allegedly violated which citation is advanced for the first time before the Board.

A few of the plethora of Awards in this regard:

"Second Division Award No. 6303 (Cole):

"Since the Employes are the moving party, they are charged with citing what rule or rules of the Agreement were violated. See Second Division Awards 1845, 4166, 5526 and Third Division Awards 15835, 16663, 17212, 18864. * * *."
(Underscore ours)

Second Division Award No. 6321 (Harr):

"The claim is premised on the assertion that 'the applicable rules of our controlling Agreement have been violated'. However, during the handling of the case on the property, the Employes did not cite a single rule the Carrier allegedly violated. In their submission to this Board, the Employes for the first time refer to Rule 90 as being violated. This should have been raised on the property, not before this Board.

"This Board has held that the Organization must prove every element of its claim and failure to identify a specific rule is fatal to its claim. * * *."

Second Division Award No. 7153 (Sickles):

"The notification of intention to file ex parte submission in this case asserted a violation of Rule 36 and 26. It did not claim a violation of Rule 35, and accordingly that assertion is not properly before us."

Third Division Award No. 21441 (McBrearty):

"* * * The Employes have the responsibility and burden to cite the rules and agreement language relied upon during handling on the property. This, of course, is a fundamental due process right of the other party, and where the rules are not cited, discussed, or in some way stated on the property, the omitted rules cannot be supplied for the first time in the submission of claim to this Board. It is the intent of the Railway Labor Act that issues in a dispute before this Board, shall have been framed by the parties in conference on the property.

"This fundamental principle cannot be evaded by Petitioner using the scatter-gun approach on the property 'or any other applicable rules of the October 1, 1973 Agreement.' The 'applicable rules' must be clearly identified."
(Underscore ours)

Third Division Award No. 21331 (Zumas):

"During the handling on the property the Organization contended that two specific provisions of the agreement were violated when Carrier failed to call Claimant to perform the work involved.

"* * * * *

"In its submissions before this Board, the Organization asserted additionally that Article 5, Rule 6(1) was also violated. Whether or not Article 5, Rule 6(1) has merit cannot be determined by this Board. There are numerous awards of this Board that have consistently held that failure to cite specific rules violations during the handling on the property precludes consideration at the Board level."

Third Division Award No. 20255 (Blackwell):

"The Carrier objects to Board consideration of Rules 34 and 48 (a) on the ground that they were not raised on the property. Rule 33, standing alone, does not support the claim and Carrier's objection to consideration of Rules 34 and 48 (a) is well taken. The Employes were expressly challenged on the property to cite any additional rules that would support the claim. The Employes

"failed to do so and the injection of additional rules for the first time before this Board comes too late. Award 18246. We shall deny the claim, on the ground that it is not supported by Rule 33."

Third Division Award No. 20166 (Sickles):

"* * * On the property, Claimant originally asserted a violation of the Scope Rule, and stressed Rule 47. In one document, Claimant asserted that Carrier's action violated Rules 1, 2, 39(b), 47 and 49(b). However, during the handling on the property the Carrier was not advised on the nature of the alleged Rule 49(b) violation. * * *

"In the documents presented to this Board, the Organization relies heavily upon the Scope Rule and 49(b). * * * While Rule 49(b) was mentioned, during the handling on the property, the alleged facts of position abolition and resultant theories of violation were not. While the Board might, in individual cases, be pursuaded to focus its attention solely upon the alleged violation of the Scope Rule (which was urged on the property) under this record we are precluded from doing so. In its Reply to Carrier's Submission, the Organization states:

> "'Furthermore, the Organization only relied on the Scope Rule to identify the positions of Time Desk Clerk as coming under the scope of the Clerk's Agreement, for the purpose of applying the governing Rule 49(b)...' (Double underscoring supplied)"

(Emphasis supplied in original)

Third Division Award No. 20064 (Blackwell):

"The foregoing shows that the rules mentioned on the property were Rules 12 and 22 (f). However, in the claim presented to the Board, Rules 12 and 22 (f) are not mentioned and instead the claim is now predicated on Carrier's violation of Rules 2(a), (f), 3 (a), 6 (a) and 57. On these facts there can be no doubt that the claim as presented to the Board is not the same claim that was handled on the property and, consequently, there is no proper claim before the Board for its consideration. The employees have the responsibility and burden to cite the rules and agreement language relied upon during handling on the property. This, of course,

"is a fundamental due process right of the other party, and where the rules are not cited, discussed, or in some way stated on the property, the omitted rules cannot be supplied for the first time in the submission of claim to this Board. We conclude therefore that the claim as stated is not properly before the Board and, accordingly, we shall issue a dismissal Award. * * *."

Third Division Award No. 20043 (Sickles):

"During the handling of the matter on the property, the employees alleged a violation of 'seniority and related rules.' Although Carrier advised the Organization that it had not cited any rule or agreement, the Organization failed to further identify the 'violation.'

"The same basic issue, concerning the same parties, was recently decided by this Referee. A failure to assert a specific rule violation while the matter is handled on the property is fatal to the employees' case, and citation of a specific rule in the Submission to this Board does not cure the earlier procedural defect. * * *."

Third Division Award No. 19970 (Roadley):

"A thorough review of the record before us shows that, during the handling of this dipuste on the property, the Organization did not identify which Rules in the Agreement had allegedly been violated but merely asserted '...a violation of the provisions of the seniority and other related rules.' It is a long established principle of this Board that failure to assert the specific Rule, or Rules, allegedly violated while the matter is being handled on the property is fatal to the claim when presented to this Board. See Awards 14754, 13282, 13741, 14118, 14772 and many others. We will accordingly dismiss the claim on the basis of the procedural defect."

Third Division Award No. 19969 (Roadley):

"In its submission to the Board Petitioner cited Rules 1, Scope; 2, Seniority; 15 (k), Work on Unassigned Days; 17 (c), Overtime; and 18 (a), Calls; and 26 (a) and (b), Classification of Work. However, a careful review of the

"record of handling on the property, as shown by the correspondence between the parties, indicates that the only rule violations advanced in behalf of Claimants were Rules 1, 17, and 26, (per General Chairman's appeal letter of May 22, 1971 and Superintendent's reply thereto, dated June 18, 1971). We will therefore limit our consideration to the partisan positions as argued on the property for it is a well established principle of this Board that the parties are barred from raising issues for the first time before the Board. * * *."

Third Division Award No. 19831 (Roadley):

"The Petitioner, in handling this claim on the property, cited 'particularly Rule 1 and others' in support of its position. Rule 1 is the Scope Rule of the Agreement. * * *.

"* * * * *

"In its submission to this Board, Petitioner relied on the language of Rule 42(f), re Work on Unassigned Days, as also supportive of their position. However, a thorough review of the record before us, including the exchange of correspondence between the parties prior to their respective submissions to this Board, shows that this Rule was not cited by Petitioner during the handling on the property.

"* * * * *

"We * * * find that Petitioner's introduction of Rule 42(f) in its submission to this Board was an effort 'to mend its hold' and is, therefore, not properly before us."

Third Division Award No. 19773 (Ritter):

"* * * The awards are abundant to the effect that the Organization can not prevail before the Board on the basis of rules that were not cited or discussed during usual handling on the property. * * *."

Third Division Award No. 18964 (Dugan):

"This Board, in a long continuous line of Awards, has repeatedly held that it is too late to supply the specifics for the first time in the submission to this Board because (1) it in effect raises new issues not the subject of conference on the property; and (2) it is the intent of the Railway Labor Act that issues in a dispute before this Board shall have been framed by the parties in conference on the property. * * *."
(Underscore ours)

Third Division Award No. 17329 (Devine):

"In its submission to this Board the Petitioner also cites and relies upon Rule 30--Absorbing Overtime. Carrier contends that the application of Rule 30 was not raised during the handling of the dispute on the property. A review of the correspondence covering the handling on the property bears out the contention of the Carrier in this respect. It is well settled that issues and contentions not raised in the handling of disputes on the property may not be raised for the first time before the Board."

"Third Division Award No. 15700 (Dorsey):

"The issue is whether Petitioner to perfect its case had the burden of specifying the rule(s) allegedly violated. When confronted with the same issue, we have held that Petitioner had the burden. For reasons stated in Award Nos. 13741, 14081 and 14772, we will dismiss the instant Claim."

"Third Division Award No. 13741 (Dorsey):

"We are of the opinion that when, on the property, a claim is made stating that an agreement has been violated without specifying the rule(s) allegedly violated and Carrier responds that it is not aware of any rule prohibiting the action complained of the burden shifts to the Organization to particularize the rule(s).

"It is axiomatic that: (1) the parties to an agreement are conclusively presumed to have knowledge of its terms, and (2) a party claiming a violation has the burden of proof.

"When a respondent denies a general allegation that the agreement has been violated for the given reason that it is not aware of any rule which supports the alleged violation, the movant, in the perfection of its case on the property, is put to supplying specifics. It is too late to supply the specifics, for the first time, in the Submission to this Board--this because (1) it in effect raises new issues not the subject of conference on the property; and (2) it is the intent of the Act that issues in a dispute, before this Board, shall have been framed by the parties in conference on the property."

Third Division Award No. 12178 (Stack):

"It is true the Claimant contended Carrier violated 'the Agreement . . . particularly Rule 3-C-2'. Thus technically a violation of each and every rule of the Agreement was claimed. But these sections referred to above were never specifically identified on the property. On the property, the entire discussion related to 3-C-2 and it was not until the filing of the Ex Parte Submission that the subject of these other Rules were raised. We do not believe that a claim can be one thing on the property and something different before this Board."
(Underscore ours)

There are many more Awards from other learned Referees which have made similar rulings. These are sufficient to make the point that the Petitioner must cite the specific rule or rules on the property which have allegedly been violated. That was not done in this case. Only Article VII of the December 4, 1975 Agreement was cited on the property. Only Article VII of the December 4, 1975 Agreement was properly before this Board for consideration.

Even if the majority in this Award chose to ignore the case law of our Board as cited above, they are - at the very least - required to consdier the correct rule. In this case the labor member of the panel cited Rule 24(h). The Referee in his Award makes four (4) separate references to Rule 24(h).

Rule 24(h) of the applicable Rules Agreement reads as follows:

"(h) When positions are abolished, the employes affected will have the privilege of exercising their rights to any job that may be preferable to them according to their seniority."

It was paragraph (b) of Rule 24 that was amended by Article III of the June 5, 1962 National Agreement. That Article III of the National Agreement merely changed the "4 working days' notice" which was in Rule 24(b) to "five (5) working days" - nothing more. Apparently the majority in making their deliberations on this case did not read the Rules which were belatedly mentioned.

While it is true that the wreck assignments at this location prior to 1972 - when there was a bona fide wreck crew assigned at Washington, Indiana - were bulletined, the "wreck crew assignment" was secondary or ancillary to the concurrently bulletined "carman" assignment. The employes so assigned were carmen first and on a full time basis. They were members of the wreck crew only when the wreck force was needed. When there ceased to be a need for a wreck crew in 1972 it would have been totally illogical to "abolish" the assignments because the primary carman portion of the assignments continued to exist. That is exactly why, as carmen who had been assigned to the wreck crew attrited, their "carman" positions were filled by bulletin, but - as Carrier pointed out in their submission - "The former members have not been replaced and no wrecking crew positions have been assigned, advertised or awarded." It is impossible to believe that the organization representatives at this location would have permitted bona fide unbulletined "vacancies" to exist without complaint.

When the correct language of Rule 24(h) as quoted above is examined, the absence of logic in abolishing the ancillary wreck crew assignments becomes more apparent. That language presupposes that the affected employe will have a right to exercise his seniority to some other position. If there were only "carman" jobs in the first place - some with added responsibility of being a wreck crew member - and only the "wreck crew" portion is removed, that leaves only the "carman" portion of the assignment. There was no logical reason or agreement requirement to abolish the "carman" positions when the wreck train equipment was removed from Washington, Indiana in 1972 and only full time car- "carman" positions remained.

For all of the above reasons, we dissent.

J. E. Mason

J. W. Gohmann

B. K. Tucker

P. V. Varga

G. H. Vernon

6-12-79