

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

Parties to Dispute: { System Federation No. 2, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Article VII of the Agreement of December 5, 1975 when they used outside contractor's equipment and forces at derailment June 7, 1977 and did not call regular assigned members of the North Little Rock, Arkansas wrecking crew who were available and accessible to respond to call.
2. That the Missouri Pacific Railroad Company be ordered to compensate regular wrecking crew members, Carmen P. A. Piechoski, B. G. Pruitt, and J. D. Waddle in the amount of thirty (30) hours each at the punitive 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 are regularly assigned members of Carrier's wrecking crew at North Little Rock, Ark. A derailment occurred at Walnut Ridge, Ark., at 7:45 p.m., on June 6, 1977. An outside Company (Hulcher) was called in to perform the work, arriving at 2:15 a.m. on June 7, 1977 and completing the clearance of the West Track at 6:00 p.m. on the same day. Also called out were some Carmen located at Poplar Bluff, Ark. who were not assigned wrecking crew members. Claimants were not called for this work assignment.

Carrier alleges that Claimants were not available for wrecking service on June 7, 1977, because they had refused or missed a call on June 4, 1977, for a derailment at Cotter, Ark. The wrecking outfit was still engaged in wrecking service at Cotter on June 7th.

Carrier alleges that inasmuch as it called other Carmen to replace Claimants at Cotter, it had no further obligation to them so long as the work at Cotter continued. We do not agree. Carrier acknowledges in its letter of December 15, 1977, from Mr. O. B. Sayers, Director of Labor Relations, that "if there were five regularly assigned ground men on the North Little Rock Wrecking Crew, then Carrier would only be required to call these men. If they refused the call, there would be no need to replace them." Thus, Carrier correctly acknowledges that its obligation under Article VII of the December 4, 1975, Agreement is to assign wrecking crew members. (See also Second Division Award 7926.)

The applicable provision of Article VII, of the December 4, 1975, Agreement reads:

"The Contractor's ground forces will not be used, however, unless all available and reasonably accessible (sic) members of the assigned wrecking crew are called."

Carrier further alleges that Claimants were not reasonably accessible. Hulcher's equipment and crew were dispatched from Mountain Home, Ark., some ninety-eight (98) miles from the scene, while Claimants are headquartered at North Little Rock, which is one hundred twenty-five (125) miles from the scene. The Employees allege that Hulcher is actually headquartered at Pine Bluff, Ark., which is one hundred seventy (170) miles from the wreck scene.

This Board has dealt with the "reasonably accessible" provision of Article VII in two disputes between the same parties, in Second Division Awards 7744 and 7837. It was held that (Award 7744):

"Since the outside contractor's force were called from a point only a relatively few miles closer than the headquarters of North Little Rock Wrecking Crew, and since in both instances highway transportation was or could have been used, the Board finds that in this instance, the Carrier cannot defend its position on the wrecking crew not being 'reasonably accessible'."

We find that Claimants were available and reasonably accessible. They should have been called. The claim is for thirty (30) hours at punitive rate. Carrier alleges in one instance that only eleven (11) hours were involved, but Chief Mechanical Officer Tutko, in his letter of October 11, 1977, states that

"The record shows ... Hulcher arrived at 2:15 A.M.
East Track was open at 4:45 a.m. and West Track about
6:00 p.m., June 7."

The Employees do not dispute the allegation. We will sustain the claim for that time, 2:15 a.m. to 6:00 p.m., at the straight time rate.

Form 1
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Award No. 8064
Docket No. 8050
2-MP-CM-'79

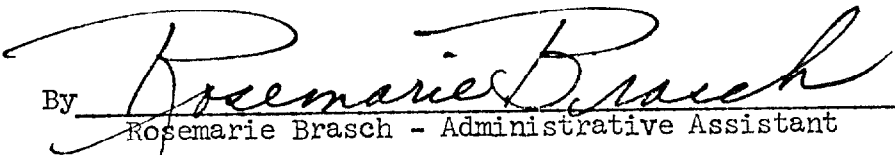
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of August, 1979.