

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: { System Federation No. 91, Railway Employees'  
{ Department, A. F. of L. - C. I. O.  
{ (Carmen)  
{  
{ Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That the Carrier violated the terms of the Agreement when it failed to allow Carman J. W. Foster, to accompany the Montgomery Wrecking Outfit for a derailment at Central Mills after his being given a call by "Telepage."
2. That the Carrier did not comply with the provisions provided for under the Railway Labor Act when the claim was handled with the Office of Master Mechanic and the reply to that letter was given by the Chief Mechanical Officer's office.
3. Accordingly the Carrier should be ordered to additionally compensate Mr. Foster forty seven (47) hours at time and one-half rate, or from 2:30 AM, thru 11:00 PM, July 23, 1977, inclusive, and from 4:30 AM, July 24, 1977, thru 7:00 AM, July 25, 1977, inclusive.

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 employees 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.

Carrier called a wrecking outfit and a wrecking crew to work on a derailment. All members of the wrecking crew, except for Claimant, accepted the call when notified. Claimant, at his own request and instruction, was to be notified by Telepage when called to accompany the wrecker, and he was so notified on the day in question. However, for reasons outlined below, he did not notify the caller that he was available and another carman was called in his place. Claimant arrived at the Car Shop prior to the departure of the wrecker, was advised that a replacement had been called, and he was not allowed to accompany the wrecker to the scene of the derailment. Hence, the claim before us.

The record indicates that in addition to the wrecking crew three men from the Miscellaneous (Road) Overtime Board were also called. The first man called from the Overtime Board accompanied the wrecking outfit; the other two men were relieved upon arrival and paid a minimum call.

Petitioner alleges a violation of Rule 108 "Wrecking Service--Use of Regular Crews" when Carrier denied Claimant the right to accompany the wrecking outfit to the derailment. It also asserts that the Wrecker Foreman should have relieved Claimant's replacement since Claimant arrived at the Wrecking Outfit prior to its departure. Rule 108 reads:

"For wrecks or derailments outside of yard limits, the regular assigned crew will accompany the wrecking outfit.  
..."

Petitioner states that Claimant tried to reach the caller by telephone of his intent to report after receiving the Telepage call, but that he received busy signals, whereupon he proceeded to his job. After arriving at the shop, Claimant again attempted to notify the caller of his availability, but continued to receive a busy signal. At that time, it is said, the Wrecker Foreman told Claimant that another carman had been assigned as a substitute. Petitioner argues that Claimant was available when the wrecker outfit left and he could have accompanied the outfit in accordance with Rule 108.

Petitioner's Ex Parte Submission also raises the issue that the instant claim was filed with the Master Mechanic but that the denial letter was signed by the Office of Chief Mechanical Officer, and Carrier was consequently not in compliance with the Railway Labor Act. This contention was not raised during the handling on the property and, therefore, is not properly before us.

Carrier's response is that neither the crew caller nor the Wrecker Foreman knew that Claimant had received the Telepage message -- which is a one-way communication-- and that the caller could not know whether Claimant was available for the assignment unless so notified by Claimant. Not having heard from Claimant, another carman was called in his place. Carrier stresses that all members of the crew, except Claimant, accepted the call when notified. Carrier adds that since the wrecker had to proceed within one hour from the time it was called, the crew caller and/or Wrecker Foreman had to know that Claimant had received the message and that he was available.

Carrier, in denying the claim, asserted that Claimant was "not on hand when the wrecker was ready to leave"; that he was "not available when the wrecking crew was called".

Petitioner refers to Second Division Award 7421 (McBrearty) as supporting its position that Claimant, as a regularly assigned wrecking crew member, had a right to accompany the wrecker. The fact situation in that case differs

from that involved herein in that: (1) Claimants there were substitutes for unavailable assigned wrecking crew members; (2) after having completed their assignment, the wrecking outfit and crew returned to home point enroute to another assignment, at which time Claimants -- the substitutes -- were released, and the regularly assigned wrecking crew members were called to accompany the outfit. The Board in Award 7421 denied the substitutes' claim that they should have been permitted to continue with the outfit on the basis that the Agreement Rule granted regularly assigned crew members contractual rights to wrecking service when the outfit is called, if they are available, to the exclusion of other carmen.

Carrier, in turn, relies on Second Division Award 1062 (Mitchell) in which the Board denied the claim of four members of the regularly assigned wreck crew on the ground they were not available at the time the call for the wrecking crew reached the General Car Foreman at 2:00 P.M. All four claimants' assignments were from 6:00 A.M. to 2:00 P.M. At the time of the call, two of the Claimants were working at a location where there was no telephone connection or other means of communication, and the other two Claimants had started for home. In that case, the wrecking crew left for the scene of the derailment at 2:10 P.M.

We must deny the claim in the instant case for the following reasons. Carrier had no confirmation that Claimant had received the call and, consequently, had no information as to his availability for the assignment at the time he was called, when Carrier was attempting to assemble a wrecking crew. Carrier has a right, under the circumstances, to know whether an employee is available and will show up for the assignment for which he is called. Carrier is entitled to have sufficient notice of the availability of members of "the regular assigned crew" at the time they are called to "accompany the wrecking outfit". Correlatively, it is incumbent upon members of the crew to provide such timely notice of their availability to appropriate company personnel, when called.

When Claimant requested that he be notified by Telepage, rather than by telephone, he assumed the burden (and risk) of notifying Carrier of receipt of the call and his availability for duty.

In the case before us, Carrier did not receive notice of Claimant's availability at the time he was called on the Telepage, although it may well be that Claimant's inability to reach Carrier was beyond his control.

For the reasons heretofore cited, we must deny the claim.

A W A R D

Claim denied.

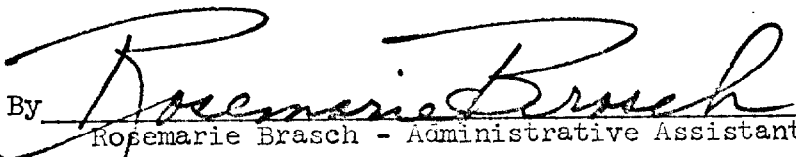
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Award No. 8108  
Docket No. 7946  
2-L&N-CM-'79

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 27th day of September, 1979.