

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

- No. 1. That under the controlling Agreement, the Carrier failed to call the Cumberland Wrecking crew to a derailment at Blazer, West Virginia on the date of April 11, 1978 at which time the Carrier retained the services of the Hulcher Emergency Service and permitted them to perform work accruing specifically to the carmen of the Carriers' assigned wrecking crew, in this instance, the Cumberland, Maryland Wrecking Crew.
- No. 2. That the Carrier failed to comply with the rules of the controlling Agreement, specifically, Rule 29 and Article VII-Wrecking Service-, of the December 4, 1975 Agreement, effective March 27, 1976, as well as Article V, Carriers' Proposal No. 7, effective November 1, 1954.
- No. 3. That accordingly the Carrier be ordered to compensate the following claimants for their losses arising out of this incident; L. B. Mathias, A. T. Rice Jr., P. H. Sibley, R. G. Hovatter, W. C. Shaffer, G. R. Shafferman, J. E. Price, and L. D. Saville, seven (7) hours and thirty (30) minutes each at doubletime rate; H. E. Fraley, J. E. Bierman, A. F. Hinkle, R. H. Schriver, and W. D. Rawnsley, eight (8) hours at time and one-half rate and two (2) hours and thirty (30) minutes at double-time rate; E. F. Ellis, five (5) hours at time and one-half 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.

When a derailment occurred at Blazer, West Virginia at about 7:00 P.M. on April 11, 1978, Carrier called the Grafton Wreck Train and an outside contractor with six groundmen.

Petitioner alleges a violation of Rule 29 and Article VII of the December 4,

1975 Agreement (quoted below) in that Carrier's Cumberland assigned wrecking crew was available and reasonably accessible to the derailment and should have been called in lieu of the outside contractor and his forces. Petitioner adds that had the Cumberland crew been called, it would have arrived at the wreck site some five hours before the outside contractor.

Article VII of the December 4, 1975 Agreement states in pertinent part:

"1. When pursuant to rules or practices, a Carrier utilizes the equipment of a contractor (with or without forces) for the performance of wrecking service, a sufficient number of the Carrier's assigned wrecking crew, if reasonably accessible to the wreck, will be called (with or without Carrier's wrecking equipment and its operators) to work with the contractor. The contractor's ground forces will not be used, however, unless all available and reasonably accessible members of the assigned wrecking crew are called. ***"

Carrier, in connection with work by an outside contractor, maintains that it is not required to call more than one assigned wreck crew, an obligation it met by its use of the Grafton Wreck Crew. Carrier construes Article VII as limiting its obligation to the use of "the assigned wrecking crew", the word "crew" being used in the singular. Hence, Carrier asserts, there is no requirement that more than one Carrier crew be called.

Carrier contends that the Cumberland wreck crew does not have a contractual right to the exclusive performance of wrecking work at Blazer or at any other location. Further, that Rule 142 cited in Petitioner's appeal does not require the use of a wreck crew unless the wreck crew and outfit are called and in the instant situation, the Cumberland Wreck Crew was not called. Carrier cites in support of its position Second Division Awards 2792, 4190, 6332 and 8106.

Petitioner disputes Carrier's interpretation of Article VII, holding that "crew" refers to the Carrier's assigned wrecking crew as a whole, all of whom are under compensated service of the same Carrier, irrespective of their home points. Consequently, Petitioner argues, any portion of the Carrier's assigned wrecking crew, if available and reasonably accessible to a derailment, should be called prior to the calling of an outside contractor.

Petitioner also contends that Carrier's response to its appeal of a declination of the claim violated the 60 day limit in Article V, Carrier's Proposal No. 7, in that Carrier is obligated to respond to claims within 60 days from the date a claim is filed, not 60 days from the date the claim is received.

Carrier disputes Petitioner's timeliness argument, and cites Board decisions that a claim cannot be considered as "filed" until it is received by the Carrier and that the posting of a claim declination tolls the time limits. (Third Division Awards 14695, 18881; Second Division Award 4609).

We find no violation of Article V, relying on prior Board decisions which hold that the date of receipt of a claim determines the 60 day time limit.

The Board's decision in Second Division Award 8106 is determinative of the issue herein. The Board in Award 8106 stated:

"In essence, therefore, we interpret the references in Article VII to 'the Carrier's assigned wrecking crew', 'the assigned wrecking crew', and 'the Carrier's wrecking crew' as a crew in the singular and not in the plural; i.e., a crew at a specific location on Carrier's property and not to all wrecking crews at all locations on Carrier's property where wrecking crews have been established and/or designated ***"

We concur in the findings and conclusions of Award 8106 and accordingly, we find that Carrier in the instant case did not violate the Agreement and the claim is denied.

A W A R D

Claim denied.

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 15th day of April, 1981.