

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
and Canada
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company violated the provisions of the controlling Agreement and the provisions of Article VII of the December 4, 1975 Agreement, when the Carrier failed to call the wrecking crew, working at Tulsa, Oklahoma, for a derailment at Troy, Oklahoma, on February 25, 1979.
2. That accordingly, the St. Louis-San Francisco Railway Company be ordered to compensate the wrecking crew members, composed of the following Carmen, at the time and one-half rate

Barney Fields - 36 hours
Paul Ruth - 36 hours
Ronald Rhoades - 36 hours

Tom Wright - 36 hours
Richard Apple - 27 hours
J. R. Ware - 20 hours

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, Carmen Barney Fields, Paul Ruth, Ronald Rhoades, Tom Wright, Richard Apple, and J. R. Ware are the members of a wrecking crew working at Tulsa, Oklahoma. The Organization claims that Carrier violated the Agreement when it failed to call Claimants for a derailment occurring at Troy, Oklahoma on February 25, 1979. It contends that Carrier specifically violated Article VII of the Agreement when it ordered the Springfield, Missouri off-track outfit to perform the work on this derailment.

Article VII, in pertinent part, states:

"When pursuant to rules or practices, a carrier utilizes the equipment of a contractor (with or without forces) for the performance of a wrecking service, a sufficient number of the carrier's assigned wrecking crew, if reasonably accessible to the wreck, will be called (with or without the 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."

The Organization argues that no attempt was made by the Carrier to contact the Tulsa wrecking crew. It further contends that Carrier did not call a sufficient number of their assigned wrecking crew and that it has been the practice to call all its members of the wrecking crew.

Carrier, on the other hand, contends that it needed off-track equipment to expeditiously clear the line and for this reason, the Springfield emergency off-track outfit consisting of eleven (11) men was called. In addition, a contractor supplying similar equipment was ordered to the derailment.

Numerous awards are cited by both parties to support its assertions here. However, Second Division Award No. 8106 is the most closely related. It states:

"We hold that Carrier did comply with the terms of Rule 96 and Article VII. The Hagerstown 'assigned wrecking crew', in its entirety, was called to work with the Contractor's equipment and crew. 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. This construction is borne out by the language of the NOTE to Article VII which also refers to wrecking crew in the singular.

The Port Covington 'outfit', referred to in Rule 96 was not called to the derailment and this Board has clearly sustained the principle that a wrecking crew need not be assigned to a derailment when no wrecking outfit is used.

Carrier was within its rights to use the independent contractor because the contractor could provide the off track equipment not available to the Carrier. Although Carrier used the contractor's forces as well as equipment, it met the requirements of Article VII by using the Hagerstown assigned wrecking crew, who were called about one hour prior to the time that Carrier called the independent contractor."

The central issue in this dispute is whether the Carrier was correct in calling the Springfield emergency off-track outfit as their assigned wrecking crew. Substantial evidence was presented to convince the Board that off-track equipment was needed. The Organization does not dispute Carrier's right to use off-track equipment to clear major derailments.

Here, the Springfield off-track outfit was a genuine wrecking crew. All members of the assigned wrecking crew were called by Carrier. All reported to the scene of the derailment.

Since Carrier was within its rights to determine the need and call for off-track equipment, and Carrier called a bona-fide assigned wrecking crew which was accessible and sufficient in number to clear the line, Carrier met the requirements of Article VII. Therefore, we will deny the claim in its entirety.

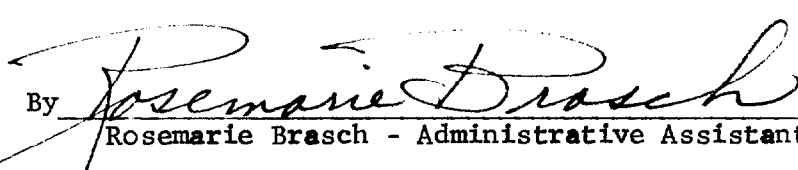
A W A R D

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 30th day of September, 1981.