

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon 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 assigned wrecking crew out of Cumberland, Maryland for work in connection with a derailment at Martinsburg, West Virginia on the date of January 14, 1979, at which time carmen's work of wrecking, as well as carmen's work contractually recognized as such, exclusively, was contracted out to two (2) outside contractors, Hulcher Emergency Service and Shenandoah Quarry.
- No. 2. That the Carrier failed to comply with the rules of the controlling Agreement, specifically, Rules 29, 138, and 142 of the Shop Crafts' Agreement, as well as Article VII of the December 4, 1975 Agreement, Wrecking Service Rule, effective March 27, 1976.
- No. 3. That accordingly the Carrier be ordered to compensate the following identified employes for their losses arising out of this incident; Carmen, L. B. Mathias, A. T. Rice Jr., P. H. Sibley, W. C. Shaffer, G. R. Shafferman, L. C. Saville, S. E. Teets, A. F. Hinkle, J. E. Bierman, J. E. Price, each, for twenty (20) hours pay at the time and one-half rate, and one (1) hour pay at the doubletime rate; R. H. Schriver, for thirty (30) hours pay at the time and one-half rate; H. E. Fraley and W. D. Rawnsley, each, for sixteen (16) hours pay at the time and one-half rate and four (4) hours pay at the doubletime rate; E. F. Ellis, for twenty (20) hours pay at the time and one-half rate and eight (8) hours pay at the doubletime 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.

On January 14, 1979, a derailment occurred on Carrier's line at approximately 6:00 a.m. near Martinsburg, West Virginia. The derailment involved 9 cars and one engine unit. The Carrier called the Brunswick Wreck Crew, the Hulcher Emergency Service and a crane from Shenandoah Quarry. The claim in this case is for the Cumberland Wreck Crew.

The facts in this case are extremely similar to Award No. 8827 recently decided by the Board involving the same parties. The arguments made in Award No. 8827 are materially the same as the instant arguments.

In Award No. 8827 we dismissed the claim because the Organization argued the claim before the Board on a different theory or basis than they did on the property. In Award No. 8827 the Organization argued for the first time at the Board that the claim should be sustained because the Carrier should call one wreck crew for each outside contractor called. The situation is identical in this case. The Organization made, in its submission, the "one crew for one contractor" argument. However, in reviewing the record of the claim as handled on the property, it cannot be concluded that the General Chairman made this argument before the claim reached the Board. The General Chairman advanced the claim on a variety of theories but the "one crew for one contractor" was not one.

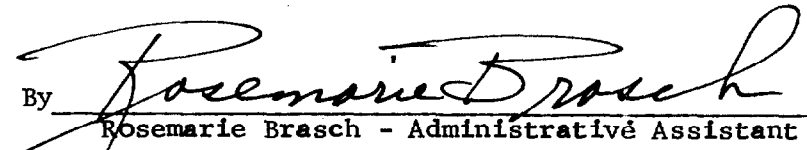
As stated in Award No. 8827, it would be violative of the long standing procedural precedent of the Board to consider a claim at the Board which was materially different than the claim handled between the parties while on the property.

A W A R D

Claim dismissed.

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 2nd day of December, 1981.