

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

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

Dispute: Claim of Employees:

1. That the service rights of regular assigned wreck crew members at Stevens, Kentucky, Frank Braun, James Fryman, L. C. Heiert, E. Rachford, B. Ellison and E. Linton and Article VII - Wrecking Service of the December 4, 1975 National Agreement and Letter of (interim) understanding, dated May 17, 1976, Files: X79 and 450-R (7-1-74) were violated on January 27, and 28, 1977.
2. Accordingly, the following listed carmen are each entitled to be additionally compensated as follows:

Frank Braun, 1 and 3/4 hours at time and one-half for the period 9:15 p.m., 1-27-77 to 11:00 p.m., 1-27-77 and 7 hours double time for the period 11:00 p.m., 1-27-77 to 6:00 a.m., 1-28-77. James Fryman, 8 and 3/4 hours at time and one-half for the period 9:15 p.m., 1-27-77 to 6:00 a.m., 1-28-77. L. C. Heiert, one and 3/4 hours at time and one-half for the period 9:15 p.m., 1-27-77 to 11:00 p.m., 1-27-77, 7 hours double time 11:00 p.m., 1-27-77 to 6:00 a.m., 1-28-77. E. Rachford, 8 and 3/4 hours double time from 9:15 p.m., 1-27-77 to 6:00 a.m., 1-28-77. B. Ellison, 2 and 1/2 hours at time and one-half for the period 9:15 p.m., 1-27-77 to 11:20 p.m., 1-27-77, 6 and 2/3 hours at double time for period 11:20 p.m., 1-27-77 to 6:00 a.m., 1-28-77. E. Linton 2 and 1/2 hours at time and one-half for the period 9:15 p.m., 1-27-77 to 11:20 p.m., 1-27-77, 6 and 2/3 hours at double time for period 11:20 p.m., 1-27-77 to 6:00 a.m., 1-28-77.

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.

The Organization set forth the facts of the instant dispute in its Submission as follows:

"On January 27, 1977, Train #92, engine #3722, eastbound out of Stevens, Kentucky derailed a portion of its train about 40 miles east of Stevens, Kentucky at approximately 1:00 p.m., 1-27-77 six of the regular assigned men from the Stevens tool car crew were dispatched to the scene of the derailment and remained on duty until relieved at 9:15 p.m., 1-27-77. After the Stevens crew was relieved the Russell, Kentucky tool cars and an outside contractor remained on duty until approximately 5:00 a.m., 1-28-77. Had the Stevens wreck crew remained on duty the earliest possible time that they could have been relieved would have been 6:00 a.m. on 1-28-77."

The Organization contends that the Carrier violated Article VII-Wrecking Service of the December 4, 1975 Agreement because an outside contractor, the Hulcher Company, and the Russell Kentucky wrecking crew remained in wrecking service after the Stevens, Kentucky regular assigned wrecking crew was relieved from service.

Article VII states as follows:

"Article VII - Wrecking Service of the December 4, 1975 National Agreement.

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 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 number of employees assigned to the carrier's wrecking crew for purposes of this rule will be the number assigned as of the date of this agreement. Note: In determining whether the carrier's assigned wrecking crew is reasonably accessible to the wreck, it will be assumed that the groundmen of the wrecking crew are called at approximately the same time as the contractor is instructed to proceed to the work."

We find that the Carrier met its obligations under Article VII of the December 4, 1975 when it called and used its Russell, Kentucky Wrecking Crew to work with the outside contractor. There is no requirement in Article VII that the Carrier use more than one wrecking crew to work along with the contractor's forces at a derailment site. Please see Second Division Award No. 8106 and Second Division Award No. 8725. We therefore must deny this claim.

Resolution of the Carrier's arguments on whether there is a wrecking crew at Russell, Kentucky and the Organization's counter position based on Second Division Awards 7926 and 8766 is not essential to the disposition of this dispute since the Carrier was in compliance with Article VII by calling and using the Russell, Kentucky Wrecking Crew to work with the outside forces.

Form 1  
Page 3

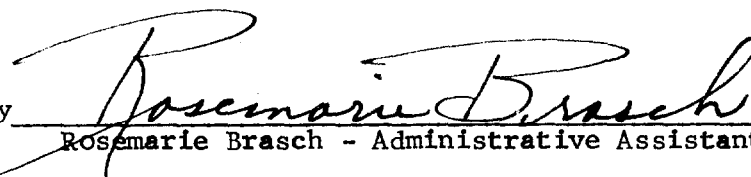
Award No. 8832  
Docket No. 8598  
2-C&O-CM-'81

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 9th day of December, 1981.