

The Second Division consisted of the regular members and in addition Referee John B. LaRocco 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 Carrier violated the provisions of the controlling Agreement when on the date of March 25, 1979, they failed to call the Cumberland Assigned Wrecking crew, available and reasonably accessible, to a derailment involving fifty-one (51) cars at Somerset, Pennsylvania, and arbitrarily utilized the services of two (2) outside contractors and ground forces, the combined total of ground forces supplied by the outside contractors amounting to a ten (10) man ground crew and two (2) Foremen. In addition, Carrier called the Connellsville assigned wrecking crew to this derailment, knowledgeable that this crew consisted of only four (4) members, and allowed outside contractors ground forces to perform wrecking work that accrued to the members of the Cumberland assigned wrecking crew, a crew sufficient in size, reasonably accessible and available, to perform the magnitude of work required at this derailment, thus eliminating the utilization of the outside contractors ground forces.
- No. 2. That accordingly, Carrier be ordered to compensate Claimants, as follows, for all time lost account of this incident: Claimants, Carmen, L. B. Mathias, A. T. Rice Jr., P. H. Sibley, W. C. Shaffer, J. E. Price, G. R. Shafferman, L. D. Saville, A. F. Hinkle, J. E. Bierman, H. E. Fraley, W. D. Rawnsley, and S. E. Teets, each, for thirteen (13) and one-half hours' pay at the time and one-half rate; E. F. Ellis, for eight (8) hours' pay at the time and one-half rate and two (2) and one-half hours at the doubletime rate; R. H. Schriver, for four (4) and one-half hours' pay at the time and one-half rate, such compensation sought under the provisions of the December 4, 1975 Agreement.

**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 are members of an assigned wrecking crew stationed at Cumberland, Maryland. At 3:00 a.m. on March 25, 1979, the Carrier called two outside contractors (Hulcher Wrecking Service and Penn Wrecking Service) as well as the Connellsville, Pennsylvania wrecking crew to clear a train derailment near Somerset, Pennsylvania. There is a factual dispute over when the outside contractors were relieved. The Organization submits the Hulcher and Penn forces worked until 4:30 p.m. on March 25, 1979 while the Carrier states the outside forces were relieved at noon on that date.

The Organization contends the Carrier violated Article VII of the December 4, 1975 Agreement when it called two outside contractors but only one assigned wrecking crew to the derailment site. The Organization claims the members of the Cumberland assigned wrecking crew were available and reasonably accessible to perform work at the Somerset derailment and, thus, the crew should have been called. The Carrier defends the claim on the basis that it complied with Article VII when it called the Connellsville crew to assist the two outside contractors. The Carrier essentially argues that Claimants had no right to perform work until or unless they were actually called.

Before we reach the merits of the claim, we note that the Carrier has objected to the claim of Mr. S. E. Teets who held the position of Wreckmaster on March 25, 1979. We must sustain the Carrier's objection. As a foreman, Mr. S. E. Teets is outside the scope of the applicable agreement and so we dismiss the claim to the extent it relates to him.

We now address the merits of the claim as it concerns the remaining Claimants. This dispute is controlled by the interpretation and application of Article VII of the December 4, 1975 Agreement which states:

"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 the 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."

The parties have correctly pointed out that Article VII refers to both "contractor" and assigned wrecking "crew" with singular nouns. Since the Carrier utilized the services of two contractors at the Somerset derailment on March 25, 1979, the issues are whether the Carrier can call another contractor and, if it does, must the Carrier also call another assigned wrecking crew.

In interpreting Article VII, we must consider the usual meaning of the words therein and we must construe the entire Article in an attempt to give effect to the parties' intent. Our interpretation must be both flexible and realistic so Article VII can be feasibly applied to the dispute presented here. Since Article VII contains no express or implied prohibition against the use of more than one outside contractor, the Carrier may, as it did here, call two contractors. However, we conclude the requirements of Article VII are triggered each time the Carrier calls an outside contractor. Thus, when the Carrier calls a second contractor, it is obligated to call a second assigned wrecking crew provided the crew is reasonably accessible and the crew members are available. Maintaining a one to one ratio of contractors to assigned wrecking crews is the most reasonable and pragmatic interpretation of the Article VII language.

The accessibility and the availability of the assigned wrecking crew must be determined on a case by case basis by ascertaining and weighing all the surrounding circumstances. The Note to Article VII does provide that accessibility should be evaluated at the approximate time that the contractor is instructed to proceed with the work. After looking at all the circumstances present in the record before us, it appears that the Cumberland assigned wrecking crew was reasonably accessible to the derailment site at the time the second contractor was called. Also, the Carrier has not refuted the Claimants' contention that they were available to perform the work on March 25, 1979.

Lastly, we must resolve the dispute over precisely when the second outside contractor was relieved. Neither side has proffered any probative evidence on this issue. The Organization retains the burden of proving all the material elements of its claim. In the absence of probative evidence to substantiate the Organization's assertion that the second contractor worked until 4:30 p.m., we must rely on the Carrier's statement that both contractors were relieved at noon. According to the Carrier's October 11, 1979 letter denying the claim, the outside contractors were called at 3:00 a.m. on March 25, 1979. At most, each Claimant was deprived of nine hours of work.

Therefore, Claimants L. B. Mathias, A. T. Rice, Jr., P. H. Sibley, W. C. Shaffer, J. E. Price, G. R. Shafferman, L. D. Saville, A. F. Hinkle, J. E. Bierman, H. E. Fraley and W. D. Rawnsley are entitled to nine hours of pay but at the straight time rate in effect on March 25, 1979. Claimant E. F. Ellis is entitled to six and one half hours of pay also at the straight time rate in effect on March 25, 1979. Since we are reducing all the claims by four and one half hours, Claimant R. H. Shriver is not entitled to any recovery. To reiterate, the portion of the claim pertaining to Claimant S. E. Teets is dismissed.

A W A R D

1. The portion of the Claim relating to S. E. Teets is dismissed.
2. The remainder of the Claim is sustained to the extent consistent with our Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of May, 1982.