

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:

1. That under the controlling Agreement, the provisions of the December 4, 1975 Agreement were violated on August 2, 1979, when the carrier failed to call three (3) of the regular assigned wrecking crew members and Carman C. Kohn, Flora, Illinois, to a derailment at Tower Hill, Illinois.
2. That accordingly, the Carrier be ordered to compensate Carmen C. L. Hicks, R. E. Clark, L. Lemon and, Carman C. Kohn, Flora, Illinois, for eight (8) hours' pay each at the over-time rate of pay.

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 basic facts in this case are relatively undisputed. At approximately 11:00 a.m., Friday, August 3, 1979, (date as corrected by the parties on the property) Train Springfield Turn derailed two cars (C&O 2401 and C&P 2021) near Tower Hill, Illinois, blocking the main track. Off-track equipment was required and Hulcher Emergency Service was notified at 3:45 p.m., August 3 and arrived at the derailment site at approximately 5:30 p.m. Due to delays resulting from a transfer company attempting to remove wheat from C&O 2401, rerailling work was not begun until 12:40 a.m., August 4 and the derailment was cleared at 3:20 a.m. and Hulcher was relieved at 3:40 a.m.

Article VII of the December 4, 1975, agreement states:

"ARTICLE VII-WRECKING 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 reasonable 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.

2. This Article shall become effective seventy-five (75) days after the effective date of this Agreement except on such roads as the General Chairman of the Carmen elects to preserve existing rules in their entirety and so notifies the carrier within forty-five (45) days of the effective date of this Agreement. Where this Article does become effective, it modified existing rules only to the extent specifically provided in this Article." (Underscoring ours).

The Organization relies on Article VII in support of their claim arguing that the Claimants are members of the assigned wrecking crew. This being true, they see the claim as clearly supported by the Rule. On the issue of whether the Claimants were part of a wrecking crew the Organization relies on Second Division Award 7926, a case involving the same Agreement, the same parties and the same location and similar facts.

Briefly speaking, it is the Carrier's position that there is no "assigned wrecking crew" at Washington. This is because the wrecker was removed from this location in 1972 and because they contend there can be no crew without the wrecker. Thus, Article VII is not appropriate. Regarding Second Division Award 7926, they believe it to be in error and contend it cannot be accepted as a precedential award.

A review of the record reveals that the contentions here are substantially the same if not identical to those in Award 7926. Moreover, the issues here cannot be distinguished from those present in Award 7926. The contentions of the Carrier here in response to Award 7926 are forceful and deserving of consideration. Perhaps if the issues were before this Board the first time we might have ultimately agreed with the Carrier. However, they are not and we are not inclined to reconsider and address issues involving the same rule, the same parties and similar facts once those issues have been decided.

There are minor distinctions to be made however between the instant case and Award 7926. This involves the status of Carman C. Kohn from Flora, Illinois. The Board cannot accept Mr. Kohn as part of the assigned wrecking crew at Washington, Indiana. Thus, this portion of the claim must be denied.

In view of the foregoing and based on the individual facts and circumstances of this case, the claims are sustained. However only at the straight time rate. See Second Division Award 8766.

A W A R D


The claim is sustained to the extent indicated in the Findings.

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Award No. 9712
Docket No. 9090
2-B&O-CM-'83

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November 1983.