Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9933
SECOND DIVISION Docket No. 9316-T
2-B&O-CM-'84

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

No. 1. That Carrier deliberately and arbitrarily allowed carmen employed by a foreign railroad, the Chesapeake and Ohio Railroad Company, to perform wrecking work at Fostoria, Ohio, such wrecking work performed on Baltimore and Ohio property on the date of January 18, 1980. Chesapeake and Ohio carmen were called to this derailment by the Carrier and in addition Fondessey Wrecking Service out of Toledo, Ohio was called, arriving on the scene with two (2) mobile cranes and ground crew. The Willard assigned wrecking crew was initially called to this derailment and arbitrarily cancelled and the outside contractor and forces, along with Chesapeake and Ohio carmen were allowed to perform wrecking work, accruing to the Baltimore and Ohio, Willard, Ohio, assigned wrecking crew on Baltimore & Ohio property, in violation of Rules 28, 29, 142, and the December 4, 1975 Agreement.

No. 2. That Carrier be ordered to compensate Claimants for all time lost account the herein referred to violation, as follows: Carmen, A. J. Long, G. K. Colich, C. C. Capelle, and P. W. Long, each, for eight (8) hours at the time and one-half rate and three (3) and one-half hours at the doubletime rate; R. J. Mahl and L. E. Masterson, each, for eight (8) hours at the time and one-half 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 employes 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 were given due notice of hearing thereon.

The basic issue in this dispute is whether the September 15, 1965 Memorandum Agreement permitted Carrier the right to call Chesapeake & Ohio Railway Carman forces from Toledo and Columbus, Ohio to perform the wrecking service work at Fostoria Yard on January 18, 1980. On the aforesaid date, at approximately 6:45 P.M. Train Extra East 4041 derailed 5 cars within yard limits at Fostoria, Ohio. Initially Carrier had called the Willard Wrecking Crew to perform the work, but immediately cancelled this assignment when it concluded that the wrecking work accrued to the Chesapeake & Ohio carmen forces. The members of the B&O

wrecking crew at Willard, Ohio were relieved prior to leaving for Fostoria Yard and allowed 4 hours pay at the straight time rate for the call. The Organization subsequently filed a claim on January 27, 1980 charging that Carrier violated Rules 28, 29 and 142 of the Controlling Agreement and the December 4, 1975 Wrecking Agreement.

In defense of its claim, the Organization contends that the derailment occurred on Baltimore & Ohio property, and asserts that all wrecking work on this property accrues exclusively to B&O carmen. It argues that only the work performed by the sole carman employed at Fostoria Yard was transferred to the Chesapeake & Ohio Railroad under the September 15, 1965 Memorandum Agreement and thus, the remaining work at this location remains with B&O carmen forces. It avers that Rules 28 and 29 pointedly provide seniority protection and assignment exclusivity to the employes employed on B&O property transferred in the 1965 coordination to the C&O Railroad. It maintains that the December 4, 1975 Wrecking Agreement is applicable in these circumstances since Agreement eligible carmen forces were reasonably accessible to the derailment situs. This provision 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 contractors ground forces will not be used, however, unless all available and reasonable accessible members of the assigned wrecking crew are called."

Carrier contends that the September 15, 1965 Memorandum Agreement is controlling since it explicitly transferred carman's work performed by B&O forces at Fostoria Yard to C&O carmen forces. This coordination Agreement provides in part:

> "Carmen work performed by B&O carman forces at Fostoria, Ohio, and work properly assignable to carmen in the coordinated operation will be placed under the scope of the C&O Carman's Agreement and performed by C&O carman forces."

Carrier asserts that in accordance with this Agreement the wrecking service work needed to be performed on January 18, 1980 accrued to C&O carman forces and the C&O Carman's Agreement was applicable. It argues that the December 4, 1975 Wrecking Agreement is equally applicable to both the B&O and C&O Railroads and avers that since Carman's work at Fostoria Yard accrues to C&O carman forces, the work was properly assigned.

In our review of this case, we concur with Carrier that the C&O carman forces are entitled to the disputed work at Fostoria Yard. Careful reading of the September 15, 1965 Agreement does not indicate that it was purposely designed to apply to the one carman's position at Fostoria and reserve by inference all other carman's work to the B&O carman forces that may exist or arise at that

location. While the coordination Agreement noted the abolishment of the B&O carman's position at Fostoria, it also clearly stated that work properly assignable to carmen in the coordinated operation will be placed under and performed by C&O carman forces. The language of this provision does not narrowly restrict its application to only the specific duties performed by the former carman at Fostoria; it assigned all carman's work at Fostoria Yard to C&O carman forces. Moreover, the coordination agreement granted B&O carmen displacement rights on the C&O carman's roster and authorized concomitant protective benefits. Since carman's work at Fostoria Yard now accrued by common agreement to C&O carman forces, neither the B&O Carman's Agreement nor the December 4, 1975 Wrecking Agreement were violated when Carrier assigned C&O carman forces to perform the wrecking service work on January 18, 1980.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1984