Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10116
SECOND DIVISION Docket No. 9810
2-B&O-CM-'84

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

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

Dispute: Claim of Employes:

1. That the Baltimore and Ohio Railroad Company violated the terms of the controlling Agreement on December 20, 1980 when they utilized the services of an outside contractor's equipment and Carmen from Flora, Illinois to perform wrecking service and failed to call members of the Washington, Indiana assigned crew.

2. That the Baltimore and Ohio Railroad Company violated Rule 33 of the controlling Agreement when Manager-Car Department Bell failed to respond to Local Chairman Clark's initial claim within the prescribed sixty (60) day time limit.

3. That accordingly, the Baltimore and Ohio Railroad Company be ordered to compensate R. E. Clark, Eugene Matteson, and Lloyd Lemon in the amount of nine and one-half (9 1/2) hours pay, each, 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 waived right of appearance at hearing thereon.

At approximately 3:00 a.m. on Saturday, December 20, 1980, Train 4112 derailed one car at Sumner, Illinois, blocking the Carrier's main line between Bridgeport and Olney, Illinois. The Carrier promptly dispatched the Assistant Car Foreman at Washington, Indiana to the scene. Also dispatched was a Carman from Washington, Indiana, who drove to the scene along with the Assistant Car Foreman in a Carrier truck containing equipment for use in rerailing cars. The Carrier additionally dispatched two Carmen from Flora, Illinois to the site. Due to the position of the derailed car, it was determined that an "off track" crane would be required in order to complete the rerailing effort and an outsider contractor, Graver Construction Company was hired to provide this necessary service. Graver arrived at approximately 7:00 a.m. and the crane and operator were used to assist the Carmen until approximately 9:30 a.m., when the contractor was relieved. The two Flora, Illinois Carmen were relieved at 12:01 p.m.; and the Assistant Car Foreman and the Carman from Washington, Indiana were relieved at 3:15 p.m.

The Claimants herein, in addition to a procedural contention, contend that they are members of the Washington, Indiana assigned wrecking crew, and that they were reasonably accessible and available to this derailment and were not called. They claim this is a violation of the Agreement.

The Carrier in its Submission referring to Second Division Award 8766 states:

> "Most important, the Board went on to rule that Agreement rules did not require that the Carrier 'formally' abolish the Washington wreck crew assignments but that the Carrier was obligated to put the former wreck crew members on notice that the assignments no longer existed. It was further determined that this notice was provided by letter dated December 22, 1976...."

The Carrier does not cite the portions of Second Division Award 8766 which state that the Carrier was not required to "formally" abolish the Washington wreck crew assignments, but was only obligated to put the former wreck crew on notice that their assignments no longer existed and that such notice was provided by letter dated December 22, 1976. We have examined Award No. 8766 and can not find the asserted rulings in that Award. In fact Award No. 8766 points out that the Carrier did not abolish the wrecking crew. Please refer to the third sentence of the below quoted language from Award 8766:

> "Whether the Carrier's change of viewpoint in December 1976 alters matters thereafter is not now at issue before the Board. The existence of an assigned wrecking crew up to December 1976, while perhaps not required in view of limited equipment, was certainly not prohibited. The Board need not resolve when or how the Carrier might have abolished the crew: the facts of record are that it not only did not do so but, until well after the October 6 incident, accepted and endorsed the crew's existence, thus requiring compliance with the strictures of Article VII, as here claimed. (Emphasis added to the third sentence.)

In Award No. 7926 issued on May 16, 1979 a majority of this Board pointed out that the wreck crew assignments are subject to the abolishment procedures of the applicable Agreement. The Dissent to that Award pointed out an apparent error in the Majority's citation of Rule 24(h) as the rule that was amended by Article III of the June 5, 1962 National Agreement and it pointed out, that it was paragraph (b) of Rule 24 that was so amended; and made further arguments including the lack of logic in requiring the abolishment of wreck crew assignments. Second Division Award No. 7926 is clear in its requirement that since wreck crew assignments are bulletined positions, they are subject to the formal abolishment procedures of the Agreement. A party acts at its own peril when it fails to follow the findings of a Board majority. The instant case occurred on December 10, 1980 and no evidence of record indicates that the Carrier at that point in time had yet abolished the wreck crew assignments at Washington, Indiana in accordance with the Agreement. There is no showing in this case that the December 22, 1976 letter, which was a declination of a claim by the Carrier's Manager of the Car Department, met the requirements for abolishment of positions set forth in the Agreement.

We find that absent evidence that the Carrier abolished the assigned wrecking crew at Washington, Indiana, we must sustain this claim. The language of Second Division Awards 9014, 8766, and 7926 support this finding. Awards 9014, 8766 and 7926, involving the same parties, established that the presence of a "wrecking derrick" is not an absolute requirement or the sine qua non of the existence of an "assigned wrecking crew"; and that the absence and removal of the "wrecking derrick" was not found contractually to be the sole determinant which automatically and instantaneously abolished an "assigned wrecking crew". In Award No. 9014 this Board pointed out that the prior decisions were not found to be arbitrary or capricious so as to warrant reversal.

We shall sustain this claim for 9 1/2 hours for each of the three Claimants, but at the straight time or pro rata rate of pay.

A W A R D

Claim sustained, as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of October, 1984