

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 10190  
Docket No. 9657  
2-B&O-CM-'84

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

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

Dispute: Claim of Employees:

- No. 1. That Carrier violated the terms of the controlling Agreement, when on the date of September 9, 1980, they failed to call a sufficient number of assigned wreck crew members of the Cumberland, Maryland assigned wrecking crew to a derailment at Glenco, Pennsylvania, such location approximately twenty-four (24) miles west of Cumberland, Maryland. That Carrier called only eight (8) men of the Cumberland assigned wrecking crew, such assigned wrecking crew consisting of a sixteen (16) man crew as the date of the December 4, 1975 Agreement. The Carrier is in direct violation of Rule 15 of the controlling Agreement, as a result of their refusal to advertise five (5) permanent vacancies existing within the Cumberland assigned wrecking crew, such vacancies the result of death, illness, retirement, promotions, etc. That Carrier arbitrarily utilized the services of two (2) outside contractors, and a combined total of sixteen (16) outside contractors ground forces, such ground forces outnumbering Carrier forces of the Cumberland assigned wrecking crew, two (2) to one (1), and allowed them to perform work at this derailment which accrues specifically to the Carmen Craft, in violation of Rules 29, 138, 142, and 142 1/2 of the controlling Agreement.
- No. 2. That Carrier is in direct violation of Rule 15 of the controlling Agreement, as well, with regard to Claimants herein named.
- No. 3. That Carrier is in violation of Rule 33 of the controlling Agreement with regard to their handling of this claim on the property.
- No. 4. That Carrier be ordered to compensate the following Claimants for all time lost account Carrier's violation of the controlling Agreement, as above: Carman, J. Delawer, F. M. Gardine, and C. R. Constable, each, for fourteen (14) hours pay at the time and one-half rate, and eight (8) hours pay at the doubletime rate; W. J. Mason, for thirty (30) hours pay at the time and one-half rate, and seven (7) hours pay at the doubletime rate; N. R. Rader, for twenty-three hours pay at the time and one-half rate, and eight (8) hours pay at the doubletime 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.

A derailment of approximately twenty-one (21) cars occurred at Glencoe, Pennsylvania on September 9, 1980. Glencoe is approximately twenty-four (24) miles from Cumberland, Pennsylvania, where the Carrier maintains a wreck crew. Thirteen (13) employes constituted the wreck crew. When that crew was called at noon on September 9, 1980, to assist rerailling the cars at Glencoe, five (5) members of that crew were unavailable - Fitzpatrick and Ellis requested not to be called, Matthias was on vacation, Shriner did not respond to the call and Rowsley declined to work on that derailment. This fact was made known to the Employes in a letter dated January 2, 1981, denying the claim. Carrier's Manager of the Car Department wrote that "The supervisor at Cumberland did make an attempt to fill the tool Car crew at Cumberland, but they did not respond" (Carrier Exhibit "B"). Eight (8) wreck members from Cumberland worked on the derailment until 2:00 P.M. on September 10, 1980. They were relieved from duty at 10:00 P.M. on the same day.

Carmen from Somerset, Pennsylvania and employes of two independent contractors - Hulcher Emergency Service and Penn Erecting Company - also worked on this derailment.

Employes raised the issue of timeliness in its letter to the Carrier dated January 26, 1981. They contend that the Carrier did not respond to claim within sixty (60) days in violation of Rule 33(a). While the claim letter is dated October 30, 1980, the U.S. Post Office stamp on the envelope shows that the letter was not posted until November 1, 1980. It was not received until November 5, 1980. It was declined within sixty (60) days as provided in Rule 33(a).

The basic claim here is a request by each of the Claimants for compensation because they were not called to work on the derailment. The allegations that the Carrier violated Rules 29, 138, 142 and 142 1/2 are only ancillary to the monetary claims. The claim seeks no relief by reason of the violation of these rules other than as they may support the compensatory claims.

An identical claim on this property was denied in Second Division Award No. 9095. Claimants in that case, like those here, were not members of the regularly established wrecking crew. They were relief wrecking crew Carmen. Award No. 9095 adopts the findings of Second Division Award No. 8679 - also on this property and quotes from Award No. 8679 as follows:

"Article VII refers to 'the Carrier's assigned wrecking crew'; i.e., named employees. Carrier's obligation is to call all such assigned wrecking crew members who are 'available and reasonably accessible' before using a contractor's ground forces. Such obligation, in our view, does not extend to relief wrecking crew Carmen, inasmuch as they are not designated, under the Agreement, as members of 'Carrier's Assigned wrecking crew'."

Here, the Carrier called all available and accessible wrecking crew members at Cumberland. Claimants were not members of that assigned wrecking crew. The findings in Second Division Awards Nos. 8679 and 9095 are applicable, they are so adopted and the claims here are, accordingly, denied.

Award No. 9095 also dealt with the identical ancillary issues raised by the Employees. Writing with this subject, Award No. 9095 said:

"We note that the parties, in this record, presented extensive arguments regarding the alleged existence of vacancies on the Cumberland assigned wrecking crew as well as an alleged duty of the Carrier to bulletin any such vacancies. These issues are outside the Organization's statement of claim either on the property or before this Board. We have not addressed these issues and we make no findings on the merits, if any, of either party's argument. Our decision should not be construed as an endorsement of either party's position on those collateral issues."

While Employees in their Statement of Claim here recite that the "Carrier is in direct violation of Rule 15 of the controlling Agreement, as a result of their refusal to advertise five (5) permanent vacancies existing within the Cumberland assigned wrecking crew...", there is no request that the Board direct the Carrier to advertise, bulletin and fill such alleged vacancies, as provided in Rule 15. Instead, the claim here asks that the Claimants be compensated because the Carrier allegedly "utilized the services of two (2) outside contractors, and a combined total of sixteen (16) outside contractors' ground forces, such ground forces outnumbering Carrier forces, of the Cumberland assigned wrecking crew, two (2) to (1), and allowed them to perform work at the derailment which accrues specifically to Carmen Craft in violation of Rules 29, 138, 142, and 142 1/2 of the controlling Agreement". None of these latter rules deals with the subject of filling permanent vacancies. Since no remedy is requested for the alleged violation of Rule 15, no claim on that subject exists upon which this Board has jurisdiction to make a definitive finding. We are obliged to follow the findings in Award No. 9095 and also find that this issue is outside the Employees' formal Statement of Claim. We, therefore, make no findings on whether or not the Carrier violated Rule 15.

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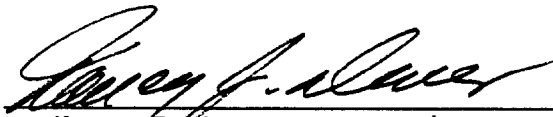
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A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1985.