

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

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

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated the controlling agreement, when on the date of March 4, 1982, the Willard assigned wrecking crew was deprived of performing wrecking work at a location known as Lester, Ohio. The Willard, Ohio assigned wrecking crew was relieved at this derailment prior to completion of the required wrecking service, and outside contractors and equipment, void any Carrier assigned wrecking crew, was allowed to continue wrecking work at this derailment, performing wrecking service work which accrued specifically to the Willard assigned wrecking crew, by virtue of the provisions or Rule 142 and 142-1/2 of the controlling agreement.

2. That accordingly, Carrier be ordered to compensate Claimants, (all members of the Willard assigned wrecking crew), for all losses suffered account Carrier's violation of the above referred to Agreement rules. Claimants are as follows: F. W. Long, R. C. Cavalier, G. K. Colich, L. E. Masterson and E. W. Bannaworth; claiming four (4) and one-half hours, each Claimant, at the double 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 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.

On March 4, 1982, a derailment occurred at Lester, Ohio. The Carrier called and assigned the Willard Wrecking Crew to the derailment. They arrived at 3:30 A.M. Thereafter, the Carrier called two outside crane rental companies, and they arrived at 7:00 P.M., March 4. While setting up for the work, the Carrier sent the Willard wrecking crew back to Willard, Ohio, to work on a derailment within the yard. The six Claimants are members of the Willard Wrecking crew who were relieved at 3:00 A.M. The remaining Members worked to clear the yard derailment.

The Organization argues the Carrier's actions violated the provisions of Rule 142-1/2, which reads as follows:

"1. When pursuant to rules or practices, a Carrier utilizes 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 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 rule modifies existing rules only to the extent specifically provided herein."

The Carrier initially points out that, one of the Claimants requested and received personal leave on March 5. It is the Carrier's position that, after he was relieved at 3:00 A.M., he was no longer available for duty.

Our review of the record affirms the Carrier utilized the equipment of a contractor to perform wrecking work. The Williard wrecking crew was already at the scene when these outside cranes arrived. Consequently, no issue of accessibility has been raised. The contractor's ground forces were used, but all available members of the wrecking crew were not.

The Carrier's submission acknowledges a settlement of one hour's pay at the straight time rate was offered on the basis the reraillings started up again at Lester at 7:00 A.M., one hour prior to the start of the Claimants' tour of duty for March 5, 1982. The Carrier considers the Organization's claim excessive and without support for the punitive rate. Through prior awards, this Board has affirmed that, when a contract violation is found, the appropriate rate of compensation for work not performed is at the pro rata, straight time rate.

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Award No. 10549
Docket No. 10316
2-B&O-CM-'85

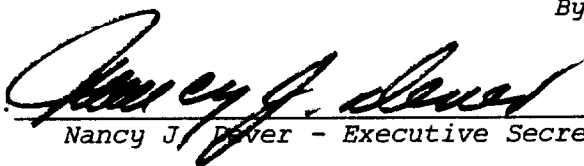
With respect to Claimant Cavalier, the Board notes the claim does not involve work beginning on March 5. Rather, the claim is for those hours following the release of the Claimants at 3:00 A.M. which was contiguous with the prior work date, March 4. In accordance with these findings, we will sustain the claim only to the extent of the pro rata, straight time rate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest.



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of September, 1984