

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig 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 the Baltimore and Ohio Railroad Company violated the controlling agreement, specifically Rule 142 and 142 1/2 when they called two outside contractors with their equipment and ground forces, to perform wrecking service at Tipp City, Ohio on October 18, 1981 in lieu of the Cincinnati, Ohio assigned wrecking crew.
2. That the Baltimore and Ohio Railroad Company be ordered to compensate the members of the Cincinnati, Ohio assigned wrecking crew as follows:

R. L. Frey, L. Salmons, A. Mackey, J. C. Smith and J. Whitford in the amount of seven (7) hours and twenty (20) minutes pay each at the time and one-half rate.

J. Burdsall, C. Lambert, T. Risdon and L. Robinson, Jr., in the amount of six (6) hours and fifty (50) minutes 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.

This dispute concerns the claim of the Organization that the Cincinnati, Ohio assigned Wrecking Crew should have been called for work on October 18, 1981, for a derailment.

The record shows that, on October 18, 1981, Train 4088 derailed two cars outside of Tipp City, Ohio. To assist in rerailing the cars, the Carrier called three Carmen and a Foreman from Dayton, Ohio and two additional Carmen and a Foreman from Lima, Ohio. The Carrier also called two Contractors,

Isringhausen Wrecking Service and Hulcher Emergency Service, who supplied an 80-ton mobile crane, two sidebooms and a front-end loader. The Contractors furnished a total of six employees. It is the assignment of work to the Contractors which has triggered this dispute.

The Organization contends, pursuant to Rule 142 1/2 of the Shop Crafts Agreement, that the members of the Cincinnati, Ohio assigned Wrecking Crew based approximately sixty (60) miles from the scene of the derailment in question should have been called. It asserts that the Claimants were available and reasonably accessible for the work in dispute, as contemplated by the controlling rule. It particularly cites and relies upon Second Division Award 8444 in support of its contention that the claim should be allowed in its entirety.

In consideration of the total record before us, we find that the evidence is clear that a sufficient number of the Carrier's assigned Wrecking Crew at Cincinnati, Ohio were reasonably accessible on October 18, 1981, to perform the work here. Therefore, there was unquestionably lost work opportunity to the Claimants in the decision to use outside forces to perform work which is reserved to them by the Agreement (although the parties are not in agreement as to the exact number of hours). Accordingly, since the Agreement here does not contain provisions to make an award as advanced by the Organization, we follow the long line of awards and Court Decisions that the breach of the contract, under the facts and circumstances here, entitled the wronged party only to compensation for any harm he may have suffered. We are also guided by the general thrust of decided cases on the property under comparable situations, particularly Second Division Awards 8766, 9014, 9091, 9712 and 9887 with respect to the rate of pay. Moreover, while the Board is not unmindful of Second Division Award 9014 concerning its holding that compensation was due for Contractor time "actually on site", here we do not find the facts and circumstances leading to that award precisely on point in this matter. Accordingly, after a complete review and consideration of all of the contentions and submissions of both parties, we embrace the pro rata rate concept, having been established that this is the measure of work lost. Therefore, in applying the make whole principle, we hold that the Claimants will be awarded compensation at the straight time rate of pay.

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 20th day of November 1985.