

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(The Baltimore and Ohio Railway Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated the controlling agreement, specifically Rule 142 1/2 when they called two (2) outside contractors, Vance Wrecking Service out of Bluffton, Indiana, and Hulcher Emergency Service out of Chicago, Illinois, and ordered a combined total of twenty-three (23) groundmen and five (5) Foremen, plus equipment, to a derailment at Walkerton, Indiana on the date of January 24, 1982 and failed to call the members of the Willard, Ohio assigned wrecking crew.
2. That accordingly, Carrier be ordered to compensate all members of the Willard, Ohio assigned wrecking crew as follows:
Claimants: Carmen, A. J. Long, R. J. Long, R. J. Mahl, G. K. Colich, E. W. Bannaworth, L. E. Masterson, R. C. Cavalier, and C. C. Capelle, for sixteen (16) hours, each, at the time and one-half rate on the date of January 24, 1982, and eight (8) hours, each, at the doubletime rate on the date of January 25, 1982; D. P. Rose, sixteen (16) hours at the time and one-half rate, and five (5) and one-half hours at the doubletime rate on date of January 24, 1982, and sixteen (16) hours at the time and one-half rate and two (2) hours at the doubletime rate on the date of January 25, 1982.

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 January 24, 1982 at 9:00 A.M., Train Extra Diesel 7530 derailed forty-six coal cars at Walkerton, Indiana which created an emergency blocking both directions on the single main line track. The weather was inclement that day. The temperature was five degrees below zero with thirty-five mile per hour winds and a twelve-inch snow accumulation. In response, Carrier called two (2) outside contractors, Hulcher and Vance, both located about 100 miles from the wreck site. The contractors brought four (4) sidewinders and three (3) bulldozers along with their own crews consisting of four (4) Supervisors, seven (7) Equipment Operators and sixteen (16) Laborers. Vance and Hulcher arrived at the derailment at approximately 1:15 P.M. and 1:30 P.M., respectively. The site was cleared by 11:30 P.M. the same day.

Claimants, members of the Baltimore and Ohio's Willard wrecking crew, located 199 miles from the derailment, were not called.

Organization is protesting Carrier's failure to call any of the members of the Willard wrecking crew to work the January 24 derailment. According to Organization, Rule 142-1/2 of the Controlling Agreement obligates Carrier to call its own employees to work with the outside wrecking contractors.

The pertinent part of Rule 142-1/2 is as follows:

"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 contractor's ground forces will not be used, however unless all available and reasonably accessible members of the assigned wrecking crew are called".

Organization contends that Carrier's regularly assigned wrecking crew was reasonably accessible and that neither the extra one hundred mile distance nor the inclement weather justified Carrier's decision to work the wreck with the contractors' ground crews. Additionally, Organization urges the Board to remedy the violation with a penalty rate.

Carrier contends that, given the emergency, it made a reasonable decision. According to Carrier, Claimants were not reasonably accessible due to a combination of factors, namely, the crew's previous slow responses, the additional one hundred miles of travel and the inclement weather.

It is well settled that main line wrecks are emergencies. It is also well settled that wrecking rules like Rule 142-1/2 were negotiated to give Carrier the flexibility necessary to deal with emergencies by permitting the use of outside contractors. The quid pro quo for Carrier's flexibility is the use of sufficient numbers of Carrier's assigned wrecking crew when reasonably accessible (see Award No. 7744). The term "reasonably accessible" is a term

of art. The term must be viewed in the totality of circumstances on a case-by-case basis in order to determine if Carrier abused its managerial discretion. In the instant case, Carrier points to past undisciplined behavior, inclement weather and additional distance.

The Board finds that this combination of facts in this case does not add up to justify Management's failure to call the Willard crew. The inclement weather on January 24 was a problem for both the contractors and the Willard crew. Moreover, inclement weather is often a factor if not the cause of many wrecks. Even though Claimants would have had to travel an extra one hundred miles without heavy equipment while the contractors transported side-winders and bulldozers, Management could not have known with reasonable certainty if calling the Willard wrecking crew would have unduly delayed clearing the wreck site. Mere difference in distance between the home points of outside contractors and Carrier's own crews, even during inclement weather faced by all wreck workers, is insufficient to prove reasonable inaccessibility.

Moreover, even the poor past performance of the Willard wrecking crew does not prevent the accessibility of that crew.

Therefore, this Board finds that the Willard crew was reasonably accessible to work the January 24 Walkerton, Indiana wreck.

According to the Board's practice of awarding straight time for time not actually worked, Claimants are entitled to be compensated only for the various hours claimed at a 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 11th day of June 1986.