Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10936
SECOND DIVISION Docket No. 10255
2-SCL-CM-'86

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: (
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. That the Seaboard Coast Line Railroad Company violated the controlling agreement when Wrecker Crewman R. T. McEntyre, G. D. Parkey, T. H. Wilson and B. D. Edmonson were not called to work on Wrecker No. 3 at Tilford Yard, Atlanta, Georgia on September 28, 1978.

2. That the Seaboard Coast Line Railroad Company was procedurally defective in the handling of this claim inasmuch as the Assistant Superintendent, Mr. J. J. McNabb - when denying the claim - did not support his denial with any specific contractual interpretation of his reasons for denying the claim.

3. That, accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate these four (4) crewmen in the amount they would have made in a normal flow of circumstances over and above their normal working hours.

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 7:00 A.M. on September 28, 1978, two tank cars derailed within the Carrier's Tilford Yard in Atlanta, Georgia. Wrecker #1 was dispatched to work the wreck. At 9:30 A.M. on that same day, however, the Carrier decided to use Wrecker #3, in addition to Outfit #1, allegedly to avoid further damage to derailed tankers. #3 Wrecker was called with only the Operator on duty minus the regularly assigned Groundsmen since the Carrier planned to use the previously dispatched #1 Wrecker Groundsmen to handle the hooks and cables on

the #3 wrecking crane. A Claim was timely filed by the Organization. The applicable time limits were extended; and the dispute is now properly before the Board.

The Organization claims that the Carrier's disputed wrecking crew assignments amounted to a violation of Rule 103(c) which reads:

> "Within yard limits, when the wrecker is used, the necessary number of members of the wrecking crew will be called to perform the work. For wrecks or derailments within the yard limits, sufficient Carmen will be called to perform the work".

The Organization argues alternate theories in favor of sustaining its Claim. First, the Organization argues that Carman bid separately in order to work the #1 and #3 Wrecking Crews, and that, given separate wrecker crew seniority, a rule violation occurred when the #1 Wrecker Groundsmen performed work on the #3 Wrecker since they were working outside their primary bid position. Therefore, according to the Organization, if the crewmen had to perform tasks outside of their proper seniority, then the Carrier did not send a sufficient number of Carmen to satisfy Rule 103(c). The Organization's second argument in favor of its position is that in his December 1, 1978, letter of declination, the Carrier Official J. J. McNabb merely declined the instant claim, giving no more justification than that the calling of the crews "... was not in violation of the existing agreement... " Thus, the Organization in its Submission alleges that the paucity of Mr. McNabb's reply violated Rule 30, since letters declining Claims must include the "reasons for such disallowance".

The Carrier maintains that it acted properly when it called the two wreckers on September 28, 1978. Simply put, the Carrier argues that it sent sufficient Carmen to perform the disputed work as evidenced by the fact that the wrecking work was accomplished quickly and safely. Moreover, the Carrier claims that it made the wrecking assignment in line with the historical practices on its property, and that the Organization failed to cite and prove a contractual violation. Finally, the Carrier disputes the propriety of this Board's consideration of the alleged inadequacy of Mr. McNabb's reply since the issue, according to the Carrier, was never raised on the property.

The Organization makes a seemingly persuasive argument concerning the propriety of the Carrier's cross utilization of #1 and #3 Ground Crews. In this regard, if the Carrier separately bulletins and bids the positions, maintaining separate rosters for both wreckers, the Organization then might have a valid claim in this case. However, the record is completely void of any proof which would aid the Board in sustaining this particular Organization contention.

Also, the record, as developed on the property, does not show any instance where the Organization raised the issue of the inadequacy of Mr. McNabb's declination. It is a well established arbitral principle, on this and other Divisions, that the Board's jurisdiction is Appellate, and therefore cannot give consideration to the Carrier's alleged procedural violation. Since the Organization failed to prove the merits of this dispute, and the Board is jurisdictionally barred from considering the Organization's procedural Claim, the grievance must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1986.