

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 10942  
Docket No. 10991  
2-B&O-CM-'86

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin 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, specifically Rule 142 1/2, when on the date of December 28, 1983, Carrier called an outside contractor, Hulcher Wrecking Service, forces and equipment, to a derailment at Wellsboro, IN, and allowed this outside contractor and forces to perform all wrecking service work at this derailment, void of any Carrier assigned wrecking crew, failing to call Carrier's assigned wrecking crew out of Willard, Ohio, in total violation of Rule 142 1/2 of the controlling Agreement.

2. That accordingly, Carrier be ordered to compensate all members of the Willard, Ohio assigned wrecking crew as follows: Carmen A. J. Long, R. J. Long, R. C. Cavalier, C. C. Capelle, P. R. Mahl, G. B. Bectel, and C. L. Biettner, each Claimant, eight (8) hours pay at the time and one-half rate and two (2) hours pay at the doubletime rate, account violation occurring on the date of December 28, 1983.

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 December 28, 1983, the Carrier's Unit 7502 derailed two (the Organization claims four) cars at Wellsboro, Indiana. Finding it an emergency situation, the Carrier called Hulcher Wrecking Service to perform the work.

The Organization states that the Carrier has violated Rule 142 1/2 which states in pertinent part:

"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 wrecking crew are called.

\* \* \*

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."

The Organization argues that the incident occurred at 7:00 P.M., the Contractor was called at 7:30 P.M. and arrived at 10:00 P.M. and the work was completed at 5:00 A.M. on the following day. The Wrecking Crew was available; the Carrier employes could have been on the site as quickly as the Contractor. The Rule states that the Carrier's equipment need not be used, but the employes must be used under these circumstances. The Organization states that the citations and past slowness of this Crew is not a usual occurrence, but that the Carrier had merely picked out those situations that were beyond the Crew's control. The Organization states that the employes under the circumstances are due penalty pay and claim eight hours at time and one-half and two hours at the double time rate.

The Carrier states the incident occurred at 6:35 P.M. on December 28, and the Contractor's Forces arrived at the site at 11:45 P.M. and were relieved at 2:00 A.M. Rule 142 1/2 requires the Carrier's Crew to be reasonably accessible. The Carrier notes that their headquarters at Willard, Ohio, is 214 miles from the site of the wreck in Wellsboro, Indiana. In addition, this Crew has demonstrated substantial slowness in reporting to other derailments in the past and the Carrier cited such instances. The Carrier states that the Claim is improper in that this Crew is not reasonably accessible as is required by the Rule. Finally, the Carrier states that if the Board upholds the Organization's Claim that the pay granted should only be straight-time pay for the time that the Contractor spent on the property.

Upon complete review of the evidence, the Board finds the Carrier to have violated Rule 144 1/2. Given the times used by the Carrier, the wreck occurred at 6:35 P.M. The Contractor did not arrive on site until 11:45 P.M. The Board notes that this Crew has been slow in the past in reporting to

derailments. Derailments are almost always emergency situations. However, the Rule does not provide for slow response times, if the Carrier feels that this Crew has been somehow derelict in their duty then this, perhaps, is a matter for disciplinary action. Even with the slow response times there is over five hours between the time of the derailment and the beginning of the Contractor's work. The Board finds that the Willard Crew was reasonably accessible to the site. The Board finds this was not a deliberate violation and can find no basis for any penalty pay as asked. The Contractor was on site from 11:45 P.M. until 2:00 A.M. and the Board will award the crew two hours and fifteen minutes at straight time. With respect to the Claim of P. R. Mahl, he was already on duty and being paid during this time, and no pay will be awarded on his behalf.

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 23rd day of July 1986.