

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 Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore & Ohio Railroad Company has violated the controlling Agreement specifically Rule 142 1/2, account their failure to recognize the continued existence of Carrier's assigned wrecking crew at Somerset, Pennsylvania.

2. That accordingly Carrier be ordered to fill assigned wreck crew positions at Somerset, Pennsylvania, such position in existence as of the date of the December 4, 1975 Agreement, Article VII, and Rule 142 1/2 of the controlling Agreement and such positions never formally abolished.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

The Claim presently before this Board contains no claim on behalf of a specifically injured Claimant(s); and Organization, furthermore, prays for relief (reestablishment of the Wrecking Crew at Somerset, Pennsylvania) which is beyond the remedied powers of this Board.

The instant dispute arose because Carrier failed to bulletin wrecking crew assignments at Carrier's Somerset, Pennsylvania facility when those positions became vacant over the years through attrition.

According to the record, sometime in 1968, Carrier removed the wrecking derrick from its Somerset, Pennsylvania Shops. Along with this equipment removal, Carrier failed to abolish the attendant wrecking crew positions maintaining the view -- which has subsequently been found to be in error by this Board -- that a wrecking crew cannot exist independently of its tools [see Second Division Awards 7926, affirmed 8766, 9014, 9712, 9887, 10116 and 10162]. As these Awards have repeatedly held:

"...the presence of a 'wrecking derrick' is not an absolute requirement or the sine qua non of the existence of an 'assigned wrecking crew'; and that the absence and removal of the 'wrecking derrick' was not found contractually to be the sole determinant which automatically and instantaneously abolished an 'assigned wrecking crew'."
[Award 10116]

Because of the decision in Second Division Award 7926 and its progeny, Organization instituted the instant Claim on November 9, 1981, requesting that Carrier reestablish an assigned wrecking crew at Somerset, Pennsylvania in accordance with Rule 15(a) - Bulletining, and Article VII - Wrecking Service, of the December 4, 1975 National Agreement (Rule 142 1/2). The latter Rule permits Carrier to use the equipment and crews of an outside contractor provided that all regularly assigned Carrier wrecking crew members are also called. Said Rule, in pertinent part, reads as follows:

"The number of employees assigned to the Carrier's wrecking crew for the purposes of this rule will be the number assigned as of the date of this Agreement."

Based upon the aforestated contractual provisions, Organization argues that since the disputed jobs were never abolished, Carrier is required to bulletin the vacant wrecking positions at this point.

Carrier disputes this Claim by arguing that Organization has failed to cite any contractual provision requiring Carrier to reestablish the wrecking outfit, and, consequently, has failed to meet its burden of proving the elements of its Claim. Moreover, Carrier questions the relevance of Award 7926 et al. These Awards, according to Carrier, pertain to other points, which is a distinction of merit since the Somerset wrecking crew has not been in existence since 1968. As evidence of the mutual acceptance of this fact, Carrier cites a February 23, 1979 letter from Organization's General Chairman to Carrier's Manager of Labor Relations which reads in part:

"This is to advise that Somerset, Pennsylvania does noe (sic) have an assigned wreck crew and has not maintained an assigned wreck crew for the past ten years."

As further evidence of Organization's apparent concurrence with the fact that the Somerset wrecking crew has not been in existence since 1968, Carrier cites Local Chairman's letter of November 9, 1981 to the Car Department Manager initiating the instant Claim wherein he raises "...the issue of reestablishing an assigned wreck crew in Somerset" (emphasis added by Board).

Carrier also questions the propriety of a Claim which is filed some fifteen (15) years subsequent to the demise of the Somerset wrecking crew.

Lastly, Carrier argues that the Somerset wrecking crew was not even in existence for seven (7) years prior to negotiation of the 1975 National Agreement, thus rendering Article VII of said Agreement inapplicable since that Article pertains to crews in existence on December 4, 1975.

While in light of Board precedent we might be favorably disposed to Organization's view that a wrecking crew still exists at Somerset because those positions were never formally abolished by Carrier, we must, nonetheless, decline this opportunity to rule upon the merits of this dispute. Simply stated, Organization herein presents a Claim which invokes a remedy which is beyond the remedial powers of the Board. Without reciting a litany of Awards which limit the Board's remedial power to compensatory damages and denying us power to fill vacancies, this Board declines to make an academic resolution of the merits of this case as they have been presented.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of August 1986.