

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Carmen Wrecker Groundmen J. Chanin, M. Broderick, M. Retondo, D. Gavrilovic, B. Pavlica, M. Smith and R. Harden, Proviso, Illinois, were deprived of work and wages to which they were entitled when the Chicago & North Western Transportation Company failed to call them for a major derailment on November 8, 1985 at Franklin Gove (sic), Illinois where a contractor and its employes were utilized at the wreck site.

2. The Chicago & North Western Transportation violated the controlling agreement when they assigned five Mechanics-in-Charge and one Carman to assist in rerailling operations, rather than the seven Carmen Claimants.

3. Accordingly, Carmen J. Chanin, M. Broderick, M. Retondo, D. Gavrilovic, B. Pavlica, M. Smith and R. Harden are entitled to be compensated in the amount of sixteen (16) hours pay at the time and one-half rate, plus eight (8) hours pay at the double time 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 employees 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.

As Third Party in interest, the United Transportation Union was advised of the pendency of this dispute, but chose not to file a submission with the Division.

The instant dispute was the result of Carrier assignment of personnel to derailment site at Franklin Grove, Illinois on November 8, 1985. The Carrier employed outside emergency forces and equipment to clear the derailment. In addition, Carrier assigned other employes including Mechanics-in-Charge to the site. The Organization argues that seven (7) Claimants of the Proviso, Illinois wrecking crew were entitled to the work and deprived thereof, in violation of numerous Rules including Agreement Rule 60. It further argues that the use of Mechanics-in-Charge was in violation as they were "not part of the regular assigned wrecking crews."

The Carrier, in its denial of Claim, noted that it had ten (10) Carmen on duty including five (5) from the Clinton Iowa Wrecking Crew, two (2) from West Chicago, two (2) from Sterling and one (1) from Rochelle, where only six (6) were required. Carrier denied any Agreement violation.

As a preliminary point, there are numerous discrepancies and additions found in the record between lines of arguments presented on property and those presented to this Board. All Ex Parte Submissions to this Board come too late for consideration. The locations of the Carmen called to the derailment are not a part of the facts this Board may consider. On property, the Organization's argument that Claimants were reasonably accessible was not rebutted. On property, the Carrier did not contest the compensatory part of this Claim which also stands unrefuted.

A careful review of the record indicates that the Organization has failed to demonstrate that there were six Carmen at the site as claimed. The Organization in its March 28th letter states that three were Mechanics-in-Charge. In its letter of April 12, it claims that five were Mechanics-in-Charge and one was a Carman, which is the Claim at bar. Carrier maintains that there were ten (10) Carmen at the derailment including five (5) from Clinton. A review of the record finds that the Organization has shown that the five groundmen from the wrecking crew at Clinton, Iowa never reached the derailment. It has failed to identify the other Carmen at the site. This Board concludes that the Organization has only shown five (5) Carmen at the derailment. The Carrier has not rebutted that they were Mechanics-in-Charge.

The Organization argues that Carrier is precluded from using Mechanics-in-Charge. The Carrier on property denies any violation thereof. Our review fails to find a violation in the use of Mechanics-in-Charge at the derailment. While there are differences in circumstances, we agree with the logic of Award 9974 which stated:

"There is no demonstrated basis to show that wrecking service should, as an exception, preclude the use of Mechanics-in-Charge to fulfill the required complement of Carmen."

The Board therefore finds in the instant case no violation shown by the Organization with regard to the use of Mechanics-in-Charge (Second Division Awards 9974, 9976, 10494).

Our reading of Rule 60 and these factual circumstances are that the Carrier was not precluded from using other than a regular assigned wrecking crew in the instant case. Further as per Rule 60, Paragraph 2(a) and (b), where Carrier deems it necessary to employ outside contractors, specific numbers of Carmen are thereby contractually mandated to be called. Nothing in the record at bar obligates Carrier to call the entire wrecking crew as Organization claims herein. The record indicates that the contractor had twelve non-operator personnel and that Rule 60(2)(b) requires the Carrier to provide six Carmen. The record indicates that only five were at the scene. Therefore the Carrier has violated the Agreement.


Claim of the Organization for the right of the Proviso wrecking crew is denied only in that there were five Carmen at the site. The record indicates that Carrier erred in assignment of Agreement provided number of Carmen. Finding no dispute on property as to the legitimacy of the Claimants, proximity, or excessive Claim, this Board will allow the one senior Claimant to be compensated as requested in Part (3) of the Claim.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1988.