Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12038
Docket No. 11660
91-2-88-2-155

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
(
(Boston and Maine Corporation

STATEMENT OF CLAIM:

1. That the Boston and Maine Corporation (hereinafter referred to as the Carrier) violated the provisions of the controlling Agreement, namely Rules 112 and 113, on April 9, 1987 by not allowing the regularly assigned wreck crew to accompany the East Deerfield wrecker to a derailment at Bangor, Maine.

2. That accordingly, the Carrier additionally compensate Carman D. Call (hereinafter referred to as the claimant) eight (8) hours at the time and one-half rate and one (1) hours at the double time rate of pay, Carman W. E. Godfrey (hereinafter referred to as the claimant) six (6) hours and forty-five (45) minutes at the time and one-half rate and one (1) hours at the double time rate of pay, and Carman J. E. Hartnett (hereinafter referred to as the claimant) eight (8) hours at the time and one-half rate and one (1) hour at the double time rate of pay for said violations.

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.

This Claim arises from the same derailment, occurring on April 8, 1987, which gave rise to Second Division Award 12037 between these parties. In that incident, an engine derailed on the property of the Springfield Terminal Railway Company at Bangor, Maine, and the Springfield Terminal Company, lacking adequate equipment for clearing the wreckage, contracted with the Carrier to use its wrecker located at East Deerfield, Massachusetts.

According to the Organization, the Carrier's East Deerfield wrecker was pulled from the stand at about 0930 hours on April 9, 1987, but, due to complications, did not depart the East Deerfield yard until about 1400 hours. A Crane Engineer, was assigned to accompany the wrecker as it departed. A full wrecker crew was not assigned to accompany the equipment because, according to the Carrier, the Springfield Terminal Company intially requested the Carrier's equipment only. However, it soon became evident that the Springfield Terminal's employees were unfamiliar with the Carrier's wrecker, and so the Carrier was asked to send crew members to assist. Consequently, the Carrier called the first three Carmen on the agreed wreck crew list at East Deerfield, and instructed them to report at 2400 hours on April 9, 1987, for transportation by Carrier vehicles to Bangor. Claimants were the Carmen called and sent to Bangor for this work.

In this Claim, the Organization contends that the Claimants should have been called to depart the East Deerfield yard with the wrecker rather than being directed to report later and transported separately. The Organization relies on Rules 112 and 113 which provide:

"Rule 112
WRECKING CREW

* * *

(c)

(4) Carmen regularly assigned to wrecking crew will accompany the outfit outside of yard limits (as provided in Rule 113) unless otherwise agreed to between local supervisor and Local Committee.

* * *

Rule 113
MAKE-UP WRECKING CREWS

When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crews will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

The Organization argues that Rules 112 and 113 have been construed literally to require that the Carrier send a regular crew to physically accompany a wrecking outfit whenever the outfit moves outside its yard to clear a derailment. The Organization cites several Second Division awards which do indeed stand for that proposition. However, the Carrier asserts that Rules 112 and 113 do not apply to work which occurs, not merely outside a wrecking crew's yard, but off the Carrier's property altogether, since such work is not within the Carrier's control.

The Carrier contends that Article VII of the December 4, 1975 Agreement reinforces this point. Article VII provides:

> "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. . . ." (emphasis added)

Since the Carrier was functioning as a contractor to the Springfield Terminal Company in this case, it reasons that Article VII precluded the use of the Carrier's forces at the Bangor derailment unless and until the conditions specified in Article VII were met.

The Board cannot accept the Carrier's position. As we held in Second Division Award 12037, once the Springfield Terminal Company requested not only the use of the Carrier's wrecker, but also the assistance of even a partial crew, the Carrier became obliged under Rules 112(c)(4) and 113 to assign an entire crew. The direct and unambiguous language of those rules can mean nothing less. The record reflects that the Carrier sent a Crane Operator, along with the wrecker thus indicating that the Springfield Terminal Company requested at least some crew assistance from the Carrier at the very outset. It follows, from the literal language of the rules and the Interpretation they have consistently received, that the remainder of the crew, including the Claimants herein, should have been sent at the same time. Consequently, the Claimants are entitled to an Award compensating them for the wages they would have received if they had left the East Deerfield yard for Bangor at 1400 hours on April 9, 1987.

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 1st day of May 1991.