

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(Southern Railway Company

STATEMENT OF CLAIM:

1. That the Southern Railway Company violated Article VII - Wrecking Service and the current controlling Agreement when they failed to call Carmen G. D. Averill and J. R. Lash for a derailment at Madison Branch, Alabama on January 30, 1989.

2. That the Southern Railway be ordered to pay Carman Averill twelve and one-half (12 1/2) hours pay at the overtime rate and Carman Lash nine (9) hours pay at the overtime rate for the carrier's violation of these rules of the controlling Agreement.

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 arose because two railroad cars derailed at Madison, Alabama. The relevant facts shows that a contractor's mobile crane, the contractor's crane operator, two of Carrier's carmen (who were not assigned to the Carrier's wrecking crew), two Carmen regularly assigned to the wrecking crew and two of Carrier's Supervisors assisted in rerailling the cars.

The controlling question is whether a sufficient number of the Carrier's assigned wrecking crew were called pursuant to and as contemplated by "Article VII - Wrecking Service" of the December 4, 1975 Agreement.

The Carrier strongly contends that this Claim must be denied as the Organization has not met its burden of proof. While its advocacy is not without merit, we find in favor of the Organization. When so doing, we particularly note that on the property the Organization asserted that one of the Carrier's Foreman sustained a personal injury, "...while performing work, that should have been performed by a Carman." This statement was never refuted or contested on the property. Therefore, it stands as fact and given the context in which the statement was made, we conclude that the Foreman was performing "wrecking crew work."

In light of the foregoing, the Claim is sustained at the straight time rate.

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 24th day of July 1991.