

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

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

STATEMENT OF CLAIM:

1. That the Carrier violated the controlling Agreement when they failed to call Carmen T. J. Hale, F. A. Nickels, A. O. Johnson and T. D. McCoy for a derailment at Andover, Virginia on May 13, 1988.

2. That the Carrier be ordered to pay Carmen T. J. Hale, F. A. Nickels, A. O. Johnson and T. D. McCoy five (5) hours pay each at the overtime 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 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.

The basic facts of this case are set forth as follows: By letter dated May 31, 1988, the Organization filed a Claim wherein it contended the Controlling Agreement was violated, when two Carmen from the Norfolk and Western Railway Company's Carbo, Virginia situs were called to perform derailment work on May 13, 1988. A Westmoreland Coal train had derailed on this date necessitating operation of the Hoesch Hydraulic jacking equipment. It was the Organization's position that since the Carmen assigned to the Andover, Virginia situs had possessed this equipment, Carrier was obligated under Article VII of the Decemer 4, 1975 Mediation Agreement to use these Carmen to perform the derailment work.

Carrier responded that since an emergency existed, it was necessary to use the Carbo, Virginia Hoesch Hydraulic jacking equipment along with the two Carmen. There was no explanation in the on situs appeals correspondence as to the details of the emergency or as to the circumstances precluding the effective use of the equipment and Carmen at Andover, Virginia. In Carrier's submission these points were further developed, but these expanded explanations amounted to new arguments.

Accordingly, since the on situs appeals record is properly before us and since the appeals record is rather sparse and since the Carrier didn't spell out in this correspondence the dimensions of the asserted emergency or the reasons why the Carbo, Virginia Hoesch Hydraulic jacking equipment couldn't be used, we are constrained to sustain the Claim. Carrier did challenge the Organization's position as to the time involved in the work, and there was no substantive response to this challenge. This point was raised in Carrier's October 4, 1988 denial letter, but not pursued by the Organization in its subsequent appeals letter of October 7, 1988. The monetary portion of the Claim is sustained at the overtime rate for the actual time it took the Norfolk and Western forces to clear the derailment and reraill the cars. In Carrier's submission it notes that it took two hours and forty five minutes. We will use this time as the basis for Claim payment.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of October 1991.

CARRIER MEMBERS' DISSENT  
TO  
AWARD 12150, DOCKET 11882  
(Referee Roukis)

The Majority's finding that:

"There was no explanation in the on situs appeals correspondence as to the details of the emergency or as to the circumstances precluding the effective use of the equipment and Carmen at Andover, Virginia. In Carrier's submission these points were further developed, but these expanded explications amounted to new arguments."

is in error, as it ignores a letter dated July 20, 1988 (Carrier Exhibit F), explaining the emergency and necessity to use a sister Carrier's equipment and Carmen to perform rerailment work at Andover.

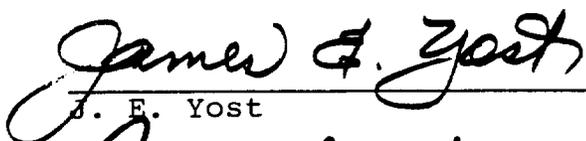
The record further reveals that the contents of the July 20, 1988 letter, were made a part of the handling on the property. Accordingly, no foundation exists for the finding that Carriers "explications" of the emergency contained in its submission "amounted to new arguments."

It is also noted from the record of the "on situs appeals correspondence" that the Organization never disputed or denied the fact that an emergency existed. Since it did not, it is obvious that the Organization recognized that an emergency in fact, existed.

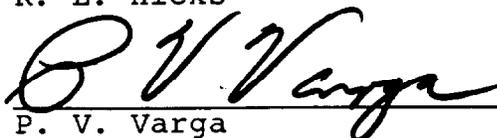
The Majority's finding of agreement violation in the face of a recognized emergency flies in the face of numerous awards of this Board holding that Carrier is justified in using outside forces to perform wrecking service where an emergency situation exists.

Second Division Awards 6821, 6840, 6841, 7159 are a few such awards.

The Majority's decision is patently in error and cannot be considered to be of precedential value.

  
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J. E. Yost

  
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R. L. Hicks

  
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P. V. Varga

  
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M. W. Fingerhut

  
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M. C. Lesnik