Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12360
SECOND DIVISION Docket No. 12034
92-2-90-2-145

The Second Division consisted of the regular members and in addition Referee John C. Fletcher 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 on June 14 and June 19, 1989 the Southern Railway Company violated Rules 134, 135 and Article VII - Wrecking Service, of the current Agreement when they failed to call the regular assigned Macon, Georgia wrecking crew to derailments at Palmer and Wadley, Georgia, respectfully.

2. That the Southern Railway Company be ordered to compensate Carman E. Dawson eleven (11) hours pay and Carman L. J. Shipp three (3) hours pay at the overtime rate that was in effection the date of this dispute. This is the pay that these two employes were deprived of when the Southern Railway Compny failed to call them to the two derailments as required. We also request that in all future derailments in the Macon territory that the regular assigned wrecking crew be used as required.

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 seeks compensation for two Carmen who were not called to work on derailments which occurred on June 14, 1989, and June 19, 1989. The Organization contends that the derailments occurred "within the confines of the territory commonly recognized as that of Macon, Georgia." It argues that the wrecker that was used was from Atlanta, Georgia, and the outside contractor that was used was from Palmer, Georgia. It argues that it has an understanding that anytime the Atlanta crane is used in Macon territory that Macon forces would be utilized. It also notes that the Macon derrick was on ready standby but was not used.

The Organization cites Rules 134 and 135 and Article VII - Wrecking Service as the operative Agreement provisions involved here. These provisions provide:

"Rule 134

Wrecking crews, including engineers and firemen, shall be composed of regular assigned carman and will be paid for such service as per General Rules. Meals and lodging will be provided by the Company while crews are on duty in wrecking service.

Rule 135

When wrecking crews are called for wrecks or derailments outside of yard limits the regular assigned crew will accompany the outfit. For wrecks and derailments within the yard limits sufficient Carmen will be called to perform the work if their services are needed.

Article VII - WRECKING SERVICE

1. When pursuant to rules and 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. The number of employees assigned to the carrier's wrecking crew for purposes of this rule will be the number of assigned as the date of this Agreement.

NOTE: In determining whether the carrier's assigned wrecking crew is reasonably accessible to the wreck, it will be assumed that the groundmen of the wrecking crew are called at approximately the same time as the contractor is instructed to proceed to the work."

When the text of these provisions is read in connection with the facts which obtained on June 14 and 19, 1989, the Claim of the Organization fails. By the explicit language of Rule 135 when the Atlanta equipment was used, Atlanta Groundmen were entitled to be used in preference to any other wrecking groundmen, including those assigned at Macon. Also, under Article VII, it has not been established that an insufficient number of Carrier's

assigned wrecking service employees (reasonably accessible to the wreck) were not utilized to work with the contractor and that any of the contractor's ground forces were utilized, when available and reasonably accessible Carrier wrecking forces were not used.

Moreover, the Organization has not pointed to a single provision in its Agreement which would prohibit the Atlanta crane from working on wrecks in what the Organization characterizes as Macon territory. Instead, in support of this notion, it emphasizes reference to one paragraph of a letter it sent to Carrier. The statement in this letter is not evidence. It cannot be elevated to evidence by repetition. It is unfounded and unsubstantiated. What the Organization is really attempting to say here is that it has a territorial fence around an area it defines as the Macon territory which reserves wrecking work to Macon employees. In support of this allegation it is obligated to demonstrate with clear rule support or uninterrupted past practice, accepted by Carrier, that this is the case. This has not been done.

The Claim is without merit. It will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of July 1992.