

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12634
Docket No. 12274
93-2-91-2-62

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU
(
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

- "1. That the carrier violated the controlling agreement, Rule 142½, by not calling the entire wreck crew and contracting an outside contractor (Hulcher) to do the work and only calling six (6) of the sixteen assigned crew members.
2. That the carrier be made to compensate the additional members of the wreck crew ten Claimants D. L. Bishop, J. E. Bierman, D. W. Shafferman, T. C. Bishop, W. C. Emerick, B. W. Yommer, J. H. Delauter, II, H. D. Rotruck, G. L. Giffin, and S. A. Meyers for the violation of Rule 142½ using outside contractors without the full wreck crew. We request the claimants be paid as presented on Claim of March 3, 1989."

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 employe 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.

On January 6, 1989, a derailment occurred in the yard at Cumberland, Maryland. Carrier called for its wrecking crew and also used an outside contractor. According to the Carrier, a number of the 16 members of the wrecking crew refused the call or

were unavailable for various reasons. Six employees did accept the call and performed work at the derailment.

The Organization contends that in using only six of the 16 member wrecking crew, Carrier's actions violated Rule 142½ of the Agreement which states:

"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. The number of employees assigned to the Carrier's wrecking crew for purposes of this rule will be the number assigned as of the date of this Agreement."

In accordance with the foregoing language, Carrier was obligated to call "all available and reasonably accessible" members of the wrecking crew. Based on our review of the record, we see no probative, specific evidence, beyond Carrier's mere assertions, that such calls were in fact made. Accordingly, Claimants are to be compensated, at the pro rata 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: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 12th day of January 1994.