NATIONAL RAILROAD ADJUSTMENT BOARD
Form 1 SECOND DIVISION Award No. 12649
Docket No. 12275
94-2-91-2-63

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 Rule 142½ when they failed to call the Cincinnati wreck crew to work with (Hulcher) an outside contractor. The Cincinnati crew being the most reasonably accessible to the wreck.

2. That the carrier be made to compensate Claimants J. L. Whitford, L. Robinson, Jr., R. L. Frey, C. D. Lambert, E. Burton, A. Mackey, J. C. Smith and K. B. Robinson the time which was claimed in the letter of March 9, 1989 for the violation of the controlling agreement Rule 142½."

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 February 28, 1989, a derailment occurred within yard limits at Washington, Indiana. The Carrier called a contractor (Hulcher) from Highland, Illinois, as well as the regularly assigned Carman at Washington, to perform the rerailing work. The work on the derailment was performed from 9:30 A.M. to 6:00 P.M. on February 28 and from 8:00 A.M. to 11:00 A.M. on March 1, 1989.

The instant claim was filed by the members of the Carrier's Cincinnati, Ohio, wrecking crew on the basis that they should have

been called to the scene. Carrier declined the claim based on its contention that the derailment occurred within yard limits at Washington and, therefore, Carrier was only required to call sufficient Carmen from among the active employees at Washington. Carrier also noted that the claim, which was for 16 hours' pay at the time and one-half rate and eight hours' pay at the double time rate on behalf of Messrs. Whitford, Smith and K. B. Robinson, and for eight hours' pay at the time and one-half rate and eight hours pay at the double time rate on behalf of Messrs. Frey, Lambert, Burton, MacKey and L. Robinson, Jr., was excessive.

The Rule relied upon by the Organization is Rule 142 1/2, which provides:

"Wrecking Service.

1. 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 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.

   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.

2. This rule modifies existing rules only to the extent specifically provided herein."

Carrier contends that Rule 142 1/2 must be read in conjunction with Rule 142, which states:

"Make-up Wrecking Crews.

When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accom-

pany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

According to Carrier, the foregoing Rule specifically addresses wrecks or derailments within yard limits. Carrier maintains that since the Carman regularly assigned within the yard was used in the instant case, its actions were proper under Rule 142.

Our review of the record reveals that a contractor was called to work at a derailment within yard limits at Washington, Indiana; that no wrecking outfit or wrecking crew was called; and that one Carman regularly assigned at the point was used. The question is whether under these facts Carrier violated the Agreement by not calling the Cincinnati wrecking crew. Under Rule 142, entitled "Make-up Wrecking Crews," when derailments or wrecks occur outside of the yard, a sufficient number of the regularly assigned wrecking crew must be called in to assist. When the wreck or derailment is within yard limits, however, Carrier is merely required to call "sufficient carmen" to perform the work. There is no Agreement requirement to call a wrecking crew when a derailment occurs within yard limits.

As in Second Division Award 7744 where similar language was at issue, this Board finds no conflict between Rule 142 1/2 and Rule 142. The former defines the Carrier's right to use outside wrecking services while requiring the use of wrecking crew members as specified, and modifies existing Rules only to the extent specifically provided. There is no indication that Rule 142 1/2 modified Rule 142, and accordingly we find that the provisions of that latter Rule control the outcome of this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 19th day of January 1994.