

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12873
Docket No. 12620
95-2-92-2-171

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

(Brotherhood Railway Carmen Division,
(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "Carrier") violated specifically Rule 157 and 158 of the Shop Crafts Agreement and Article VII of the December 4, 1975, National Agreement when the Carrier did not allow the Claimants to assist the contractor on November 2 and 3, 1990, in re-railing loaded Tank Car UTLX-804986, when members of the Wrecking Crew were available, willing and qualified to perform that work.
2. That, accordingly, the Chesapeake and Ohio Railroad Company (CSX Transportation) be ordered to additionally compensate Carmen T.E. Stiles, Bowery, Curran, Fisher and Harmon for six and one half (6 1/2) hours; Carmen Grayson and Davis are entitled to be compensated for five (5) hours and Carman Golden is entitled to be compensated for one and one half (1 1/2) hours. All of the Claimants compensation is to be at the applicable time and one half rate for the violation on November 2 and 3, 1990."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 was filed on December 11, 1990, on behalf of nine Car Repairmen in Richmond, Virginia. The Organization alleges that at the time of the derailment of a tank car on Commonwealth Propane's lead track on November 2, 1990. Claimants were members of a wrecking crew who were available to handle the work of rerailling the car. The failure to utilize them, according to the Organization, is a violation of Rules 157 and 158 of the Controlling Agreement and Article VII of the December 4, 1975, National Agreement:

"ARTICLE VII - 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 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.

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 Article shall become effective 75 days after the effective date of this Agreement except on such roads as the general chairman of the Carmen elects to preserve existing rules in their entirety and so notifies the carrier within 45 days of the effective date of this Agreement. Where this Article does become effective, it modifies existing rules only to the extent specifically provided in this Article."

"WRECKING CREWS

Rule 157.(a) Regularly assigned wrecking crews, not including engineers, will be composed of carmen, where sufficient men are available, and will be paid for such service under Rule 10. Meals and lodging will be provided by the Company while crews are on duty in wrecking service.

(b) When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.

Understanding--Letter of April 9, 1940.

It seems to be quite proper, under this rule, to give qualified carmen the first opportunity to fill a vacancy as wrecking derrick engineer, being careful to secure men with considerable seniority, so that when suspensions come, there will be no question raised about their retention because of their qualifications as steam derrick engineers; and if it is not feasible to find qualified carmen, then select from any other craft."

"Rule 158. When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

Past practice, the Organization suggests, dictates that wrecking crew members will be called when a contractor's ground forces are used for wrecking service. Any time Carrier employs miscellaneous overtime board members in connection with this work, instead of regularly assigned members of the wrecking crew, it is an Agreement violation. Despite the fact that the derailment occurred on private industry track, Carrier was responsible for the work.

Carrier maintains that no wreck crew was called because none existed. The wreck crew had been abolished several months before. The three rules cited by the Organization apply only when an "assigned" wrecking crew exists. Further, since the derailment occurred on a customer's private siding, it, the customer, was responsible for arranging its own wrecking service.

The Organization's contention that a wrecking crew was in existence is not based on the belief that Carrier had taken no action to abolish the crew, but rather that the action that it took in November 1989 was not in compliance with the guidelines of the Controlling Agreement. The contention that this was an illegal maneuver, however, is not a part of the current claim before this Board and thus that issue is beyond our jurisdiction to settle. Until determined otherwise, Carrier's argument that no wrecking crew existed must stand unrefuted. (See, for example, Second Division Awards 12474, 12560.)

Carrier is correct in concluding that the rules cited speak to the issue of the deployment of assigned wrecking crews. As a consequence, there is no indication that a violation occurred.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.