

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12874
Docket No. 12621
95-2-92-2-169

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 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 September 16, 1991, in re-railing cars ETCX 1014, SBD 220377, GATX 73767, SOU 98636, CO 604462, ACFX 49323, CSXT 225983, and UTLX 25691 when Wrecking Crew members were available, accessible to the wreck, willing and qualified to perform that work.
2. That, accordingly, the Chesapeake and Ohio Railroad Company (CSX Transportation) be ordered to additionally compensate Carmen Cecil Woods 8 hours at time and a half rate and 3 hours at double time rate, Carmen Ronald Howard for 16 hours at time and a half rate and 3 hours at double time rate, Carman Howard Hatmaker for 11 1/2 hours at time and a half rate and Carman Stanley Harris for 11 1/2 hours at time and a half rate for Carrier's violation of Rule 158 of the Chesapeake and Ohio Shop Crafts Agreement and Article VII-Wrecking Service of the December 4, 1975 Mediation Agreement."

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.

The Organization argues that Rule 158 of the Controlling Shop Crafts Agreement and Article VII of the December 4, 1975, National Agreement were violated when Carrier did not utilize Claimants, regularly assigned Car Repairmen in Russell, Kentucky, to assist an outside contractor in rerailing eight cars that had derailed in Catlettsburg, Kentucky, on September 16, 1991. As in Award 12873 of this Board, involving the same parties, the Organization contends that a valid wrecking crew was in existence, given the fact that Carrier's prior abolishment of the crew had been contrary to the terms of the parties' Agreement. This Board determined in Award 12873 that the question of whether Carrier's abolishment of the crew was illegal was not a part of the present claim and that, consequently, the Board would be exceeding its jurisdiction were it to make a determination on that issue. Until proven otherwise, Carrier's position that there was not a bona fide wrecking crew at Russell must stand unrefuted.

This case raises numerous ancillary issues, including whether the Big Sandy Sub-Division is protected by Russell or Ashland Carmen and whether a mobile crane is the same as a wreck outfit. But given the inapplicability of Rule 158 and Article VII to Claimants, these issues need not be reached.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

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