

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12931
Docket No. 12866
95-2-94-2-9

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

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

STATEMENT OF CLAIM:

- "1. That the Carrier violated Rule 142½ of the controlling Agreement, as amended, on January 2, 1992 whenever it failed to call the Cumberland, Maryland Tool Car Crew to work with Donahue Brothers Contractor at Allingdal, West Virginia.
2. That the Carrier be ordered to recompense Claimants listed below, in the appropriate amounts as listed below:

<u>CLAIMANT</u>	<u>HOURS @</u> <u>ST. TIME</u>	<u>HOURS @</u> <u>TIME½</u>	<u>HOURS @</u> <u>DOUBLE TIME</u>
C.R. ENGELBACH	8	8	8
H.W. HOBELL		16	
M.S. RICE		16	
J.E. PUHALLA	8	8	8
S.A. MEYERS		16	
T.C. BISHOP	8	8	8
P.G. MOHLER		16	
T.E. BENNETT		16	
P.M. DAVIDSON		16	
L.E. DENT		16	
R.W. BIERMAN		16	
R.J. LEWIS		16	
C.H. GROVES		16	
R.D. MORRISON		16	
J.J. MILLER		16	
W.E. WHETZEL	8	8	8"

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 were given due notice of hearing thereon.

At 2:00 AM on December 31, 1991, 18 cars derailed in Allingdal, West Virginia. On January 2, 1992, Carrier utilized an outside contractor, Donahue Brothers, to clear the wreck. Carrier did not call the two regularly assigned wreck crew members because they were scheduled elsewhere.

On February 28, 1992, the instant claim was filed by Local Chairman T.C. Bishop on behalf of himself and 15 other members of the Cumberland, Maryland, Tool Car Crew. It is the Organization's contention that under Rule 142½ of the Agreement, Carrier is required to use a 16-person wrecking crew to assist an outside contractor at derailments. That was the number of members assigned as of December 4, 1975. The fact that Carrier elected not to fill positions as members retire does not relieve it of its obligations to use the proper complement. The Organization believes that Carrier recognizes the utilization of the Cumberland Tool Car Extra List as a mechanism for complying with the intent of Rule 142½.

A review of the record reveals that this is one more in a long line of claims alleging virtually the same facts and raising the same arguments as are present here. All of these cases have come down on the side of the Carrier. In the most recent decision (Second Division Award 12735, issued on September 13, 1994), the Board concluded as follows:

"After a full and complete review of the Rule and the on-property dispute, the Board finds its attention directed to prior Awards. In three separate decisions this Board found that the Carrier need not call upon relief wrecking crew Carmen. The point of this claim is to provide compensation to Carmen off the extra list who are clearly not covered by the language of the Rule. The Claimants are not members of the assigned wrecking crew.

The Board is constrained by prior Awards unless it determines that the Awards are palpably erroneous (Second Division Awards 11702, 11506, 11323). We do not in our review find the Awards to be in error."

At this point, this Board finds the decision in Award 12735, as well as the Awards referenced therein, to be res judicata. This issue has been settled and needs no further exploration here.

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 16th day of August 1995.