Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12954
Docket No. 12723
95-2-93-2-21

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division
(Transportation Communications
(International Union, AFL-CIO, CLC
(
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

"1. That the Elgin, Joliet and Eastern Railway Company violated the current Working Agreement, when they did not call Carmen A. Disalvo, P.C. Attaway, Jr., M. Stainback, H. Hubbard, J. Stevens, C. Highfill, and P. Lopez out on overtime for Wrecking Service on the North Yard Lead at Waukegan, Illinois.

2. That the Elgin, Joliet and Eastern Railway Company be ordered to compensate Carmen A. Disalvo, P.C. Attaway, Jr., M. Stainback, H. Hubbard, J. Stevens, C. Highfill, and P. Lopez (hereinafter referred to as Claimants) for ten (10) hours at the punitive rate of pay, as required by Rule #47, #50 and #97 of the Current Controlling 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.

On December 29, 1991, seven freight cars were derailed on the Carrier's property. An outside contractor was called and rerailed four of the cars with the use of four groundsmen. The three other cars were rerailed by a Car Inspector, utilizing a wreck truck.

The Claim seeks pay (10 hours' punitive time and one hour straight time in lieu of meal time) for seven Carmen, whom the Organization contends should have been called to assist with the rerailing.

As its principal defense, the Carrier notes that the Wreck Crew positions and Holmes Crane operator position (including a list of nine names) were abolished by published notice "... at the end of tour of duty Friday, November 10, 1989." There is no record shown to the Board of protest of this abolishment.

The Organization refers to Rule 47, Classification of Work, which includes "... the operation and use of any other carrier equipment used in wrecking service in accordance with Rule 50."

The Carrier, however, points to the limitations of Rule 50, which permits the utilization of outside contractors for wrecks and derailments. Section (h) reads in pertinent part as follows:

> "When, pursuant to rules or practices, the 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...."

Since the Carrier abolished its "assigned wrecking crew" two years earlier, the Carrier argues that there was no basis to call the Claimants to assist. In addition, the Claimants were not members of the abolished wrecking crew in any case, and the number of Claimants and hours claimed do not appear to comport with the facts of the incident.

In view of the acknowledged abolition of the wrecking crew, the Board finds the Carrier correct in that there is no contractual basis for required use of Carrier forces under Rule 50 (h) and (j) when a contractor is used.

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 18th day of September 1995.