

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13008
Docket No. 12843
96-2-93-2-214

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

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

STATEMENT OF CLAIM: "Claim of the Committee of the
Union that:

1. That the Carrier violated Rule 142-1/2 of the Controlling Agreement, as amended, on December 10, 1991 whenever it failed to call the Cumberland, Maryland Tool Car Crew to work with Hulcher Contractor at Harpers Ferry, West Virginia.

2. That the Carrier be ordered to recompense Claimants listed below, in the appropriate amounts as listed below:

<u>CLAIMANT</u>	<u>STRAIGHT TIME</u>	<u>TIME AND ½</u>	<u>DOUBLE TIME</u>
	<u>HOURS</u>	<u>HOURS</u>	<u>HOURS</u>
J.H. DeLAUTER	8	29	17
H.D. ROTRUCK	16	29	17
S.A. MYERS	8	29	17
T.C. BISHOP	8	29	17
C.R. ENGELBACH	8	29	17
L.E. DENT	0	29	17
M.D. ROBERTSON	0	29	17
G.L. MCKENZIE	0	29	17
J.L. CAMPBELL	8	29	17
W.C. EMERICK	0	29	17"

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 16, 1991, the Cumberland Tool Car Crew, consisting of one contract Supervisor and one Groundman, were utilized by the Carrier to work on a derailment at Harpers Ferry. In addition, five other Carmen from the extra list were called. These seven employees worked with an outside contractor at the wreck site.

The Organization's contention is that the Carrier violated Rule 142½ when it failed to call 16 employees, which was "the number of employees assigned to the Carrier's wrecking crew...as of the date of this Agreement." Rule 142½ reads in pertinent part as follows:

"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...."

The issue raised by the Organization has been resolved many times through previous Awards, most notably in Second Division Award 12735, involving the same parties. Award 12735, which was adopted on September 13, 1994, concluded as follows:

"In the instant case, the Carrier called all available members of the assigned wrecking crew and they worked the derailment. In prior Awards between these same parties on this property, this Board held that the Rule obligates the Carrier to call all assigned members of the wrecking crew before using an outside contractor, but 'does not cover relief wrecking crew carmen inasmuch as they are not designated as members of the Carrier's assigned wrecking crew' (Second Division Awards 9149, 9095, 8679). Due to the fact that it cannot be demonstrated with the existing record of evidence that the Carrier failed to utilize a 'sufficient' number of the assigned wrecking crew or that the Claimants were proper claimants, the Claim must be denied."

As to the diminution through attrition of the regularly assigned wrecking crew and its present status having fewer members than "assigned as of the date of this Agreement," denial Awards have been consistent despite this circumstance. It remains for the Carrier and the Organization to resolve this apparent contradiction.

As to the Organization's request that the Carrier be ordered to "advertise" the "fourteen (14) vacant positions," this is clearly beyond the Board's jurisdiction, even if the facts justified such a step.

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 10th day of July 1996.