

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13014
Docket No. 12915
96-2-94-2-71

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen Division -
(Transportation Communications International
(Union, A.F.L. - C.I.O.
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company
((Western Lines)

STATEMENT OF CLAIM:

"1. That the Southern Pacific Transportation Company (Western Lines) violated the terms and conditions of the current Agreement when they arbitrarily abolished the eighth groundman wrecking crew position at Los Angeles, CA by bulletin dated July 1, 1993, thereby denying Carman L. Felix his contractual right to be assigned on said position.

2. That accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to reestablish the eighth groundman wrecking crew position at Los Angeles, CA and that claimant L. Felix be compensated for all losses sustained as a result of this improper abolishment commencing July 1, 1993 and continuing thereafter as long as the violation exists."

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.

A detailed reading of this record leads this Board to these undisputed facts. Article VII of the December 4, 1975 National Agreement is the central issue. That Article pertains to wrecking service and in part holds that the size of the wrecking crew will be determined by the number assigned on the date of Agreement. The facts demonstrate that an eight man wrecking crew existed on this property. In this instant dispute the Carrier first awarded and then subsequently abolished the eighth wrecking crew groundman's position. This Claim of the Organization is for violation in that the Carrier reduced the required number of the wrecking crew force in violation of Article VII.

The parties to this dispute have presented numerous Awards favoring their respective positions. The Carrier and Organization have each introduced issues and argument ex parte which this Board may not consider as they were not timely raised on property. This is particularly true of discussions of equipment. The Organization has properly argued that there had always been eight crew members and the signed affidavits attest to that fact. The Carrier never denied this on property and it therefore stands as fact. The Carrier however denied a violation of the Agreement in that no "relief outfit" exists. The Organization did not rebut the Carrier's assertion which we must also consider fact.

Accordingly, this Board is faced with an Agreement which requires eight crewmen for a wrecking service relief outfit that no longer exists. Central to our determination is the Carrier's un rebutted assertions in its denial of May 2, 1994. The Carrier stated therein that:

"The 'relief outfit' has been retired for a number of years, when a derailment occurs in the Los Angeles area the Carrier now uses trucks with mobile cranes with the necessary number of Carrier employees. In the event of a major derailment requiring the use of a contractor Carrier calls the appropriate number of its employees, as required by Article VII - Wrecking Service - of the December 4, 1975 Agreement."

The Board is forced to conclude that as no wrecking crew exists, the abolishment of a position from a non-existent relief outfit does not violate the Agreement (Second Division Awards 12560, 12474; Public Law Board No. 5268, Award No. 5). The Claim must be denied.

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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.