

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13027
Docket No. 12957
96-2-94-2-111

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

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"1. That the Union Pacific Railroad Company violated the Controlling Agreement dated November 6, 1976 including Rules 10, 32, 134, 137 and 138 in Pocatello, Idaho when Employees other than Carmen performed rerailing work at Maidenrock, Montana on November 13, 14 and 15, 1993.

2. That the Union Pacific railroad be ordered to compensate Carmen M. Smiddy, C. Nicholls and B. E. Cranor for fifty nine and one half (59 ½) hours each, at the time and one half rate of pay."

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 claim of the Organization is that the Carrier violated several rules when they utilized supervisors at a derailment instead of Carmen. The Organization argues that following a derailment at Maidenrock, Montana, the Wrecking Crew was called and worked November 13, 14 and 15 at rerailing. While five of the assigned Carmen were called it was insufficient for the task, and in violation of the Agreement the Carrier utilized three supervisors instead of the required Carmen.

The Carrier's primary argument is that the Wrecking Crew utilized a new Mantis Crane. As this was instructional the use of supervisors in demonstrating how to set up and operate the crane was proper. The Carrier also argues that the Organization's assertions are "wholly lacking in substantive proof" and the claim is excessive.

This Board finds the Claim sound and the required burden of proof met by substantial probative evidence. Rule 138 requires that:

"when wrecking crews are called for wrecks or derailments outside of yard limits a sufficient number of the regularly assigned crew will accompany the outfit."

The Organization presented the names of three Claimants who were available to work the derailment. The Carrier did not rebut their availability. In fact, one of the Claimants actually showed up to accompany the Wrecking Crew and was sent home. The Board's review shows this is clearly Carmen's work. As for supervisors performing Carmen's work under these instant circumstances, this Board can find no Agreement support for such action. The Carrier's argument that this was instructional does not hold up under the evidence of record. The Organization asserted with signed statements from the crew that the supervisors "hooked cars, dragged cables, and set up blocks for outriggers on the Mantis Crane, and worked side by side" with Carmen. There is no evidence for this Board to conclude that the work performed was instructional.

Additional arguments raised for the first time in the Carrier's Submission are not properly before this Board. There is sufficient probative evidence presented on property that the Carrier failed to call a sufficient number of crew and utilized supervisors to perform work belonging to Carmen in violation of the Agreement.

Having determined from the record that the disputed work belongs to Carmen, the Board sustains Part 1 of the Claim. However, Part 2 of the Claim cannot be sustained as presented. The record is clear that the Claimants should have been permitted to perform the rerailing and incurred loss of income. Claimants are to be compensated the difference between what they should have earned at the time and one half rate of pay for wrecking service and their earnings during the same time period.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of August 1996.