

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13313

Docket No. 13167

98-2-96-2-71

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

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

- “1. That the Indiana Harbor Belt Railroad Company violated the current working agreement when it failed to call, from the ‘Wrecking List’, three (3) carmen, on Saturday, June 24, 1995, to do Carman’s work (wrecking), on overtime, during the 7:00 AM to 3:00 PM shift.
2. That the Indiana Harbor Belt Railroad Company (hereinafter referred to as the Carrier) be ordered to compensate Carmen. K. Bynum, D. Steele and D. Montgomery (hereinafter referred to as the Claimants) when they were available, qualified and willing to perform wrecking work consisting of 2 hours and 40 minutes at punitive rate of pay as provided by Rules 6, 11, and 157(d) of the current working 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 were given due notice of hearing thereon.

This claim arose as a result of a derailment on June 24, 1995 at Wolf Lake Lead, a part of the Gibson Seniority District located in Hammond, Indiana. When the derailment occurred, the Carrier called three Blue Island Seniority District Carmen to the derailment in the Gibson Seniority District.

The Carrier acknowledged that it called the wrong crew. The work belonged to the Gibson Seniority District. The Carrier also acknowledged that it erred when activating three Groundmen, because only one was required for the yard derailment. Accordingly, it paid Carman K. Bynum (one of the three Claimants) who was the next eligible person for call, five hours and 30 minutes at the straight time rate. The Organization submits, however, that in addition to paying Bynum, the other two Gibson Seniority District Carmen also should be compensated because they were not called.

The Organization acknowledged on the property that the Carrier was required to call only one Carman. Therefore, the Organization, in effect, is arguing that equity requires the payments at issue.

That the Carrier may have paid too many Carmen is not a proper basis, in the Board's opinion, to claim pay for other Carmen who would not have been called if the Carrier had properly complied with the Agreement. The Organization's position is simply not logical or reasonable. It is well settled that the person who has been deprived of a work opportunity is the only one who has been harmed. In this case, the harmed party was Carman Bynum, who was properly compensated.

AWARD

Claim denied.

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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 6th day of August 1998.