

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13388

Docket No. 13298

99-2-97-2-69

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. The Carrier willfully violated Rule 141, Rule 142 ½, and the Hoesch Truck Call Procedure Agreement dated January 1, 1994 by failing to dispatch Carman R.G. Barnett for rerailling duties in Queensgate Yard on April 15, 1996.
2. The Carrier shall now be required to compensate R.G. Barnett four hours forty five minutes (4:45) at the time and one-half rate of pay (\$113.64) for Monday April 15, 1996, which he would have received had he been contractually called.”

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.

On the claim date, the Carrier utilized three Carmen from the shops to reraill a car derailed in the Queensgate Bowl Yard. To complete the assignment, each worked four and one-half hours beyond the end of the first shift.

Claimant was assigned to and worked first shift to inspect inbound cars.

The original claim contended a local understanding titled the "Hoesch Truck Call Procedure" was violated when Claimant was not called to work the four and one-half hours overtime. Two of the three Claimants had been members of the Hoesch Truck Crew. Claimant, who had been part of that crew, believed he should have been called to work the overtime in lieu of the third employee utilized who was not a part of that crew. On appeal, the Organization also cited Rule 142½ pertaining to the Carrier's obligation when it contracts wrecking service. There is no evidence that the Carrier contracted with any outside agency to reraill the car. Rule 142½ is not applicable, nor for that matter is the "Hoesch Truck Call Procedure." There is no "Hoesch Truck" assigned at this location. Item 1 of the Agreement reads:

"... Hoesch truck will be called out for the purpose of rerailling cars & trucks...."

Item 2 reads:

"... Three (3) CDL qualified drivers will accompany the hoesch truck...."

In this instance, there is absolutely no indication what equipment, if any, was utilized in the derailment, contracted for or borrowed, from another section of the Carrier. All that the Board is aware of is that a derailment occurred and the derailed car was rerailled.

Because the Carrier did not contract for, nor borrow, any equipment to use in rerailling the car, it cannot be (and has not been) argued that said equipment was substituted for the Hoesch Truck, or for the wrecker for that matter.

Under the circumstances, Carrier's rerailing and the use of the three Carmen was entirely proper and not in violation of any existing Rule.

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 12th day of April 1999.