Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13528
Docket No. 13414
00-2-99-2-9

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

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

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

(1) That the Carrier did violate Rule 142 of the Agreement when they failed to call Carmen for a yard derailment and employed an outside contractor with its ground forces to perform Carmen work within the yard limits.

(2) That the Carrier be ordered to pay Claimants N. Abplanalp, A. Twaddell, R. Brossfield, P. Banik, C. Patton, W. Kincer and D. Rider three (3) hours time and one-half rate Carmen rate of pay for this willful violation."

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 December 1, 1997, the Carrier engaged Hulcher Wrecking Service to rerail four cars within the Cincinnati Terminal. The contractor, with its own equipment, utilized seven of its own employees. The Organization argues that the seven Claimants, Carmen off duty at the time, should have been called for this work.

Rule 142, which the Organization contends was violated, reads in pertinent part as follows:

> "For wrecks or derailments within yard limits, sufficient Carmen will be called to perform the work."

Rule 142 does not require the calling of a specific number of Carmen but rather calls for "sufficient" Carmen "to perform the work." The necessity of use of the contractor's equipment is not questioned. The Statement of Claim contends that the Carrier "employed an outside contractor with its ground forces to perform Carmen work." The initial claim, however, states:

> "Hulcher wrecking service was called to rerail the cars[.] Hulcher had 7 people with them to perform the work."

The claim is on behalf of seven Carmen, apparently a number meant to equal the "7 people" employed by the contractor - without regard to whether the contractor's employees operated equipment or did other tasks.

Second Division Award 13424, involving the same parties, ruled on a closely similar situation. Therein the Carrier employed a contractor for rerailing work within yard limits and the Carrier's Wreckmaster worked with the contractor. The claim sought pay for seven Carmen. After finding "no evidentiary showing that the Carrier did, in fact, possess the necessary equipment," Award 13424 stated:

> "Obviously, a second issue here is whether the Carrier called 'sufficient' Carmen to assist with the work in accordance with the provisions of Rule 142. The Board is in no position to second guess the Carrier on this issue as a general matter. The Board can only take each claim filed under the Rules at bar as it is presented."

Similarly, the Board finds appropriate the reasoning in Second Division Award 8361, also involving the same parties, as follows:

"As to the inference the Organization would have us draw from the presence on the property of the Hulcher crew, we are reluctant to assume that, during whatever time they were actually working on the day in question, they were necessarily doing routine ground work which should or could have been done by Carrier Carmen. . . .

On the record before it, this Board states that it frankly does not have sufficiently persuasive and credible evidence to allow it to judge whether or not a significant volume (more than de minimis) of ground work was performed by the Hulcher crew which could and should have been performed by the Carrier carmen under Rule No. 142."

What is lacking in the matter here under review is specific showing that any of the contractor's employees were engaged in groundsmen's work which Carmen might have performed. As in Award 13424, the Board cannot "second guess" how the contractor's employees were utilized.

While Rule 142½ is not referenced in the Statement of Claim, it appears that the Organization makes some reliance on this Rule, referring to mandatory use of Carmen for wrecking service. Rule 142½, however, concerns the calling of a wrecking crew, which is done for work outside yard limits. For work "within yard limits," Rule 142 - and only Rule 142 - is applicable. Lacking more information, as noted above, the Board has no basis to determine that the Carrier violated Rule 142.

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 27th day of July, 2000.