

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13557

Docket No. 13433

00-2-99-2-24

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Carrier did violate Rule 142 and 142½ 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: L. Whitson, E. Clark, C. Patton and W. Kincer three (3) hours time and one-half 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 February 19, 1998, two cars derailed within the yard limits of the Cincinnati, Ohio, Terminal. The Carrier called an outside contractor to rerail the cars. The Organization contends that the Carrier failed to call a sufficient number of Carmen to assist the employees of the outside contractor. The Carrier maintains that the Organization failed to prove what a sufficient number of Carmen was in the instant situation.

The claim references Rules 142 and 142½. However, because the claim involves work inside yard limits, only Rule 142 is applicable. See Second Division Award 13528. Rule 142 provides:

“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. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work.”

In Award 13528, the Board held:

“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.”

Upon review of the record in the instant case, we find that the situation presented is identical to that presented in Award 13528. There is no evidence in the record as to whether any of the contractor’s employees were engaged in work that Carmen might have performed. Accordingly, we find, as did the Board in Award 13528, that the Organization failed to carry its burden to prove that a sufficient number of Carmen were not called on the date in question.

AWARD

Claim denied.

Form 1
Page 3

Award No. 13557
Docket No. 13433
00-2-99-2-24

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 October, 2000.