

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13953
Docket No. 13836
08-2-NRAB-00002-070024
07-2-24**

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood of Railway Carmen Division of TCIU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 30.4 and 30.5, when they failed to call Carman James Real for the Assistant Crane Operator position at Erving, MA.**
- 2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carman James Real in the amount of sixteen (16) hours at the rate of time and one-half and twenty four (24) hours at the rate of double time. This is the amount he would have earned had the Carrier not violated the 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 dispute involves the assignment of an employee to assist the regular Crane Operator Carman Sears on a wrecking crew. It is the position of the Organization that on March 6, 2006, the Carrier violated Rules 30.4 and 30.5 when it used Carman Scribner rather than Claimant to fill that assignment. It argues that Claimant was the first available Assistant Crane Operator on the Wrecking List whereas Scribner is only qualified as a Groundman. Furthermore, it argues that the Carrier cannot "hand pick" an employee to work with the crane after it has mutually agreed upon the Wrecking List which is used for the filling of overtime to work on wrecks. Lastly, it argues that because Claimant chose not to go to the derailment to work as a Groundman does not negate his claim for not being called as the Assistant Crane Operator.

It is the Carrier's position that pursuant to Rule 30.2 Wreck Crews are comprised of either two or four Groundmen, as well as one Crane Operator and Cook and there is no position designated as Assistant Crane Operator. According to it, the Crane Operator position is an actual bid position under the Agreement and is owned by Carman Sears, whereas the Cook position and Groundmen positions are volunteer positions. It also argues that Wrecking List was produced by the Organization with no in-put by the Carrier. It concludes by stating that the Claimant was not denied the opportunity to go to the wreck as he was offered work as Groundman, but rejected it forfeiting any compensation, thus, there is no basis for his claim.

The Board has thoroughly reviewed the record and discovers that the Wrecking List which is the basis for the Organization's claim was not mutually agreed to by the parties. In the Organization's letter of October 6, 2006, it stated: "...if the Organization or the Local Committee didn't make out the list it wouldn't get done." That concession is an admission that the List was not made in accordance with Rule 30.4. Therefore, in this instance we have a dispute over whether or not the position of Assistant Crane Operator exists, as the Organization states it does, while the Carrier states it does not. Based upon those irreconcilable facts it is impossible to determine whether Claimant should have been called for the alleged position. Additionally, the Organization concedes that Claimant was named

as a member of the Wrecking Crew, but rejected the assignment of Groundman. Again, there is no indication in the record whether the rate of pay of the two positions (if there were two) was different. Claimant would have been wise to have accepted the proffered position and grieved the difference in rates of pay, if any, later for no other reason than to indicate his desire to work. The Board finds and holds in this instance that because the Claimant rejected the opportunity to work on the Wrecking Crew the claim must be denied. The parties should meet and agree to a Wrecking List in accordance with Rules 30.4 and 30.5.

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 23rd day of October 2008.