

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14008
Docket No. 13886
09-2-NRAB-00002-080038**

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

**(Brotherhood Railway Carmen Division – TCU
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 30.2, when they ordered one (1) operator and one (1) Carman to perform re-railing work at Fitchburg, MA.**
- 2. That, accordingly, the Springfield Terminal Railway Company be required to compensate Carman Jason Haas in the amount of seven (7) hours at the overtime rate of pay for utilizing only one (1) groundman for the first seven hours of rerailing. 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.

On August 24, 2007, the Carrier required the utilization of a wreck crew to rerail car GACX 3059 at Fitchburg, Massachusetts. A Mobile Crane Operator and two Carmen, one of which was the Claimant, reported for duty at Lawrence, Massachusetts, at 7:00 A.M. The Operator and one Carman drove to Fitchburg and arrived there at approximately 8:00 A.M. The actual rerailing of the car commenced sometime between 8:00 A.M and 8:30 A.M. The Claimant did not accompany the wrecking crew to Fitchburg, but was sent from Lawrence to Billerica to pick up supplies and deliver them to East Deerfield for work that the Carrier needed to complete at that location. The Claimant was then sent from East Deerfield to Fitchburg to assist in the rerailing of the car. He arrived at Fitchburg at approximately 2:00 P.M.

The Organization has based its claim on Rule 30.2 of the Agreement, which reads as follows:

“The regularly assigned wreck crew will be comprised of 1 operator and 2 groundmen for company owned mobile wreck cranes and/or wreck/bulldozers when used in wreck service.”

The Board notes that it is not disputed that a mobile crane was used in wreck service at Fitchburg and that Rule 30.2 is controlling as to the minimum staffing requirements of the wreck crew, i.e., one Operator and two Groundmen. It is also not disputed that the Claimant, although called to work as a part of the wreck crew, was used for a portion of the time to perform service not related to the wrecking service. While the Carrier may have needed supplies to be delivered to East Deerfield, this did not relieve it of its responsibility to properly man the wreck crew during the actual rerailing of the car.

However, the Board finds that the claim as submitted for time from 7:00 A.M. until 2:00 P.M. is excessive for two reasons. First, there was no wrecking service performed while the Operator and one Groundman travelled from Lawrence to Fitchburg. The actual wrecking service commenced sometime between 8:00 A.M. and 8:30 A.M. Also, the Claimant was on duty and under pay during the time he was absent from the rerailing site, albeit, not engaged in wreck service. The Board finds, therefore, that the proper remedy in this case is to compensate the Claimant for a two hour and 40 minute call in light of the clear Agreement violation.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 8th day of May 2009.