

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 14013
Docket No. 13895
10-2-NRAB-00002-090008

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

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

STATEMENT OF CLAIM:

"Claim of the Employees':

1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rules 2.1, 29.2, 29.5 and 30.2, when the Carrier used one (1) groundman with the RC-75 (Mobile Crane) at a derailment in Jay, Maine.
2. That, accordingly, the Springfield Terminal Railway Company be required to compensate Carman Brian Bertleson in the amount of ten and one-half (10 1/2) hours at the overtime rate of pay. 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.

It is the Organization's position that the Carrier allowed or required General Manager J. Austin and Supervisor J. Richard to perform Carman's work in Jay, Maine, on October 25, 2007. According to it, the Supervisors hauled cables and blocking, set blocking, hooked up the trucks on two cars and put the blocking and cables away. The cars handled were MEC 31766 and MEC 31892. W. L. Bennett was the only Groundman at this derailment because Carman C. Scribner was required to go to the east end of the yard at Jay to re-rail four cars while T. LeBlanc was sent to operate the crane. It further asserted that the Carrier violated Rules 2.1(m), 29.2, 29.5 and 30.2 by failing to call the Claimant to work on the aforementioned derailments. Because of that, it requested that the claim be sustained as presented.

It is the position of the Carrier that on the morning in question, Assistant Manager Giguere departed Waterville, Maine, with a mobile crane, a Crane Operator and two Groundmen in accordance with Rule 30.2. It argued that when the crew left Waterville, it expected to re-rail only two cars at Jay, which was approximately a one and one-half hour drive from Waterville. Upon arrival, the train crew advised them that there were five more cars derailed at the east end of the yard. Those five were "pull-ons" and Supervisor Giguere went with Carman Scribner to re-rail them while the Crane Operator and the other Groundman stayed with the General Manager and Assistant Manager on the original derailment. Both re-railing operations were completed and the crew was back to its home location by 6:00 P.M. It concluded by reasoning that the overtime was incidental to the completion of the assignments and requested that the claim remain denied.

The Board review of the record reveals that the Carrier never refuted or denied the fact that Supervisors did covered work. However, we also recognize the fact that when Supervisor Giguere left Waterville with a full wreck crew, he did not know, nor could he have foreseen that there would be two derailment operations rather than one. Therefore, the Board finds and holds that the Agreement was violated when non-covered employees performed protected work, but because the situation could not have been anticipated, the Claimant's request for compensation shall be reduced to a call in accordance with the applicable Call Rule.

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 14th day of January 2010.