

Award No. 4212

Docket No. 4067

2-GN-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated Article V of the August 21, 1954 Agreement, and accordingly claim should be allowed as presented.
2. That under the current agreement the service rights of Carmen Elmo Crapser and Boyd Allred, were violated when section men were used to augment the crew in rerailing NP 4929 on April 9, 1960.
3. That accordingly, the carrier be ordered to additionally compensate these Carman' employes to the amount of eight hours each, at the time and one-half rate account of said violation.

EMPLOYEES' STATEMENT OF FACTS: The Great Northern Ry. Co., hereinafter referred to as the carrier, maintains at Klamath Falls, Oregon, car repair and inspection facilities. Carrier also maintains a fully equipped wrecking outfit to which Carmen are regularly assigned.

On April 8, 1960, while switching the Weyerhaeuser Timber Yard, carrier's switch engine No. 128 and freight cars GN12555, SAL 11055 and NP 4929 were derailed. Carrier dispatched its wrecking derrick along with the regularly assigned wrecking engineer and fireman and carmen from the shift on duty to rerail the derailed equipment.

On April 9, 1960, while in the process of clearing up the derailment, the wrecking derrick broke down necessitating the rerailment of NP 4929 with jacks and blocking. For this operation carrier assigned section men to assist the carmen at the scene in setting blocking and jacks necessary to the rerailment of NP 4929.

Carmen Elmo Crapser and Boyd Allred, hereinafter referred to as claimants, are regularly employed by the carrier at Klamath Falls as carmen.

Under date of April 21, 1960 Local Chairman N. T. Patrick filed a claim with Car Foreman E. S. Casey on behalf of claimants, account carrier's improper

For the foregoing reasons, the carrier respectfully requests that the claims of the employes be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

At Klamath Falls, Ore., the Carrier's lines connect with those of the Weyerhaeuser Co., and Carrier has rights to operate over portions of the Weyerhaeuser trackage.

On April 8, 1960 one of Carrier's switch engines derailed, and with it two box cars and a truck of box car NP 4929. The derailment occurred on the Weyerhaeuser property.

Weyerhaeuser called upon Carrier for assistance, and Carrier dispatched its wrecking derrick, four Carmen and nine Sectionmen from Klamath Falls to the scene.

Claimants allege that the Sectionmen were used to assist in rerailing NP 4929 in violation of the provisions of Rule 88 of the controlling agreement.

Claimants also allege that Carrier violated Article V, (a) of the August 21, 1954 Agreement because the letter of declination following the filing of the claim failed to state the reasons for disallowance, and accordingly the claim should be allowed as presented, under Article V(a).

The record shows correspondence processing this claim after the original letter of declination complained of, wherein reasons for disallowance were discussed, but no mention is made of a violation of Article V(a) until the letter of the General Chairman dated October 12, 1960. The time slip denial was dated April 14, 1960.

We hold that the Claimants have waived the procedural device of Article V(a) by proceeding to process the claim on its merits and delaying the procedural objection almost to the time of final disposition on the property.

Conceding that the Great Northern Sectionmen performed Carmen's work at the scene in helping re-rail NP 4929, the question remains as to whether the situation resulted in a violation of Rule 88 of the controlling agreement.

Carrier's position is that the work was requested by Weyerhaeuser, on their property and under their control, and that the agreement does not apply on foreign property, and this was not work which Great Northern Carmen could claim under Rule 88.

Having examined the agreement and former awards of this Division cited by both parties to this dispute, we concur in the Carrier's contention and accordingly must deny the claim.

4212—8

768

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST:

Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1963.