

Award No. 2039

Docket No. 1869

2-GN-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, the Carrier improperly abolished the assigned Wrecking Crew with the exception of the Fireman and Engineer at Everett, Washington effective April 23, 1954.

2. That the Carrier subsequently failed to call three of the affected Carmen B. Pearson, W. Smith and L. VanLandeghem for a derailment at Index, Washington, May 3.

3. That accordingly the Carrier be ordered to:

a) Rescind the bulletin of April 23, 1954 and restore the Wrecking Crew to its status prior to April 23, 1954, and allow Carmen A. Weber, W. Smith, B. Pearson, G. Magaffin and L. Vanlandeghem to again exercise their rights as assigned members of the Everett Wrecking Crew.

b) Compensate Carmen B. Pearson, W. Smith and L. Vanlandeghem for four hours each (call time) for derailment at Index, Washington, May 3, 1954.

EMPLOYEES' STATEMENT OF FACTS: Prior to April 23, 1954, the Delta wrecking outfit consisted of seven carmen, including derrick operator and fireman.

On April 23, 1954, the carrier posted a bulletin at Everett, Washington, as follows:

"All Concerned:

Effective at once assignment of Delta wrecking outfit is as follows:

1 Wrecking Foreman
1 Wrecking Engineer
1 Wrecking Fireman

this requirement has been met in the instant case by the assignment of two carmen (the wrecking engineer and the fireman) to this crew.

Your Board has many times held that it is not only the prerogative of the carrier but also its duty to operate as economically as is possible so far as this may be done without violating any rule. As a matter of fact, in a case on this carrier decided by the Third Division of your Board, with Referee Carter participating, under date of February 4, 1955, in denying this claim it is stated as follows:

“We think it is proper for the Carrier to avoid the payment of overtime in any way that it can as long as no rule provision is violated in so doing.”

Perhaps no better instance could be found in which this principle could be illustrated than in the particular case now before your Board. On this occasion a derailment occurred near Index, Washington in which one car of gravel was derailed while ballasting, and account of this apparently going to result in a delay to Train No. 2 (the Empire Builder), and to furnish protection so far as possible against this, the wrecking crew was called as well as train and engine crew to go to the scene of derailment with as little delay as possible. However, as it turned out, the work train itself cleared the main track without the use of the wrecking derrick and the wrecking crew did not leave Delta Yard but were paid on the call basis for four hours.

If the employes' contention in this case were to be supported, not only would the two men comprising the wrecking crew have been paid this four hours or two hours and forty minutes at the overtime rate, but the five additional employes, claimants herein, would also have been paid without actually having performed any wrecking service. Hence, this clearly illustrates the justification of the carrier in reducing this wrecking crew to two carmen, including a wrecking engineer and fireman.

In summing up, therefore, the carrier holds that it has been conclusively shown that there has been no violation of any rule involved in the case now before you but, to the contrary, the carrier has fulfilled the requirements of all rules in the handling of the wrecking crew at Delta, while at the same time handling this matter in a manner best calculated to produce the most economical and efficient operation.

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.

The parties to said dispute were given due notice of hearing thereon.

The question for our determination is whether or not the carrier violated Rule 88 when it abolished the assigned wrecking crew with the exception of the wrecking foreman, wrecking engineer and wrecking fireman.

Rule 88 (in part) reads:

Paragraph 1. “Wrecking crews, including derrick operators and firemen, will be composed of carmen who will be regularly assigned by bulletin and will be paid as per Rules 17 and 22.”

Paragraph 4. “When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classifications.”

The Bulletin of April 23, 1954, reads as follows:

“All concerned: Effective at once assignment of Delta wrecking outfit is as follows:

- 1 Wrecking Foreman
- 1 Wrecking Engineer
- 1 Wrecking Fireman

Balance of crew will be called from overtime list.”

(Emphasis by the Board)

It appears that following the bulletin of April 23, 1954, with the exception of the call of May 3, 1954, not less than four (4) men were called from the overtime list to complete the crew. Calling of men from the overtime list was in accordance with the provisions of the bulletin of April 23, 1954.

Rule 88, by its construction, and with a consideration of its past application borne out by past practice, appears to us to contemplate that there will be regularly assigned carmen to comprise the wrecking crews. The rule further provides that a derrick operator and a fireman will be a part of the crew and that they will also come from the ranks of carmen and also be regularly assigned.

The rule is silent as to the number of regularly assigned carmen who, in addition to the derrick operators and firemen, shall be regularly assigned.

It is our opinion that Rule 88, considered along with the past practice on this property, makes it mandatory for the carrier to provide regular assignments (by bulletin) for carmen to comprise a wrecking crew. Such carmen are in addition to derrick operators and firemen. Inasmuch as the exact number is not mentioned in the rule, it is our further opinion that the number should be determined by management, based on its record of actual need and use in the past, considered along with its anticipated needs in the future.

The carrier should re-establish as many regular assignments as necessary in order to comply with the provisions of Rule 88. The employes who formerly held the assignments should be restored just as if the assignments had not been abolished.

In the event that the carrier deems, reasonably and in good faith, that the requirements of the service justify a reduction in the number of regular assignments, the principles of seniority should govern in effectuating such a reduction.

AWARD

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1956.