

Award No. 2554

Docket No. 2337

2-GN-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carmen George Strom and Maurice Strandberg were improperly relieved from service on the Willmar Wrecking Outfit at 3:00 P.M. February 12, 1955, when men from the St. Cloud Wrecking Outfit were used to supplement the Willmar Crew.

2. That accordingly the Carrier be ordered to compensate Carmen George Strom and Maurice Strandberg a total of 83½ hours each at the time and one-half rate for February 12, 13, 14 and 15, 1955.

EMPLOYEES' STATEMENT OF FACTS: On February 12, 1955 at 1:30 A.M. the Willmar Wrecking Crew consisting of Engineer William Berg, Fireman Donald Phelps, Cook Lawrence Herman and Groundmen Steve Kosak and George Rensted, supplemented by Carmen George Strom and Maurice Strandberg, was called for service at West Union, Minnesota. The outfit left Willmar at about 3:00 A.M. and arrived at the scene of the derailment at 10:30 A.M. They started work at 11:00 A.M. and worked until 3:00 P.M., at which time George Rensted, George Strom and Maurice Strandberg were relieved and sent home, arriving at Willmar at 7:00 P.M., February 12, 1955. Three members of the St. Cloud Wrecking Crew were retained to fill the places of the three men sent home from the Willmar Crew and at the same time the St. Cloud Wrecking Outfit was sent home. Carrier has subsequently paid Carman George Rensted 83½ hours at the time and one-half rate for the service, which he was deprived of on the Willmar Crew. This dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement of September 1, 1949, as subsequently Amended, is controlling.

"The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance." See Awards 3523, 6018, 5040, 5976."

In light of the foregoing, and considering that no rule, precedent or practice has been or can be cited to support the contentions of the employes, the carrier respectfully requests the Board to deny the claim.

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 facts in this docket show that three derricks and crews, together with certain extra men added, were sent to this wreck. Claimants Strom and Strandberg went as extra men added to the Willmar Crew. When the carrier decided to return the St. Cloud derrick to its base, three men of its regular crew were retained at the wreck and worked with the Willmar derrick. At that time the two claimants were detached from the Willmar crew and sent home.

The carrier's response to this argument is that the question has already been decided on this property by Award No. 2039—Douglass—which states that the number of men comprising the crew "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 serious wreck in the present case points up the obvious difficulty in trying to anticipate the proper size of a wrecking crew, which must be sufficient to meet the demand for its service without being wastefully over-size. Rule 88 must have been agreed to by the parties with this situation in mind.

The carrier has in the present case utilized the permission established by Rule 88 which states "when needed, men . . . may be taken as additional members of wrecking crews," to augment the cadre or nucleus which comprised the Willmar crew. Incidentally, we note that the Willmar crew contained two regular groundmen upon arrival at the wreck.

From the facts shown this Board concludes that it has not been proven that the carrier has failed in its compliance with that provision of Rule 88 requiring that "wrecking crews . . . will be composed of carmen who will be regularly assigned by bulletin." We refuse to decide what shall constitute a reasonable complement for a wrecking crew because such a determination cannot properly be made by observing only the one occasion presented here in retrospect. What size crew is reasonable, should be based on future average needs. The determination of the number of jobs of each classification and the size of a full crew should be made by the parties through negotiation.

No violation of Rule 88 has been shown.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July, 1957.