

Award No. 2792
Docket No. 2585
2-CMStP&P-CM-'58

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. 76, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement the Carrier improperly assigned employees other than the Wreck Crew, on January 4, 5, 6, 9, 10, 11 and 12, 1956, to finish clearing up a wreck and rerailling cars of a wreck that occurred on December 22, 1955, at Elso, Montana, which had been partially cleared up by the regularly assigned wreck crew of Harlowton, Montana.

2. That, accordingly, the Carrier be ordered to additionally compensate the following named members of the regularly assigned wreck crew of Harlowton, Montana, for the number of hours specified:

E. A. Nissen	Three and one-half (3½) hours
R. M. Wood	Forty-four (44) hours
J. T. Reardon	Fifty-nine (59) hours
C. F. Jennings	Nineteen (19) hours
V. E. Hutchinson	Forty-six (46) hours

EMPLOYEES' STATEMENT OF FACTS: E. A. Nissen, R. M. Wood, J. T. Reardon, C. F. Jennings and V. E. Hutchinson, hereinafter referred to as the claimants, are employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad, hereinafter referred to as the carrier, as carmen at Harlowton, Montana.

Claimants are regularly assigned to the following hours of service, work week and rest days:

E. A. Nissen, 7:30 A.M. to 4:00 P.M., Mon. thru Fri. Rest days: Sat. & Sun.

It is the carrier's position that the wrecking crew was properly called for the wreck or derailment occurring near Elso, Montana, on December 22, 1955, that all the wrecking service in connection with that derailment was completed when the wrecking outfit and the wrecking crew was released and returned to Harlowton at 8:15 P.M., December 23, 1955 and that there was no wreck or derailment occurring outside of yard limits on January 4, 5, 6, 9, 10, 11 or 12, 1956, for which the Harlowton wrecking crew should have been called therefor.

We cannot agree that when it was determined that trucks could be placed under four of the damaged cars so that they could be moved to a repair point that the carrier became obligated to call the wrecking crew. Members of the wrecking crew were already at the point as carmen-welders performing work of carmen-welders for which they were called. The heavy wrecker could not have been used to place the trucks under the cars because the work had to be performed on the bridge and the approach to the bridge which could not be used in their damaged condition by the heavier wrecking outfit. If any wrecking service was performed at any time during the period of the claim, and we do not agree there was, then it could only have been in connection with the placing of the trucks under the cars and the carmen-welders performed all service in connection therewith except the lifting done by the operator of the B&B crane and to which he devoted approximately five or six hours on January 4, 1956. Otherwise, it could not possibly be said that wrecking service was performed on any date involved in the claim.

The carmen-welders, as we have indicated here, were sent to Elso, Montana to cut up the damaged cars as scrap. They performed that work and were properly paid therefor and there can be no contention that such work was wrecking service falling within the limitations of Rule 88(c).

Scrap from damaged cars is often left at the point of an accident and picked up by the Maintenance of Way Department crane as it moves over the railroad. The work of picking up scrap resulting from a derailment or the cutting up of cars involved in a derailment is work which is not assigned to nor exclusively performed by carmen and seldom is such scrap handled by the wrecker because promptly upon the completion of the wrecking service the wrecker is returned to its headquarter point for availability elsewhere and the scrap at the scene of the accident is later picked up when it is convenient to do so, generally by the use of Maintenance of Way cranes passing over the division. This practice has been in existence for years. In this case the scrap as it was cut up from the damaged cars was loaded by the B&B crane which was at that point in connection with bridge repairs and avoided the necessity of some other Maintenance of Way Department crane being used for that purpose.

It is the carrier's position that employees within the scope of the carmen's agreement were used in this instance for all work which they were properly entitled, that there was no wrecking service performed during the period January 4 through January 12, 1956 and that there is no basis for this claim.

We respectfully ask that it be declined.

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 employees 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 uncontroverted facts contained herein disclose the following:

There was a serious wreck at Elso, Montana on December 22. The claimant wrecking crew members were sent to the scene and worked until 3:30 P.M., December 23, when they returned home. Service had been restored, although there were a number of cars damaged which were left at the site. Several days later some of those cars were scrapped and others were placed on trucks with the assistance of a crane of the B&B Department which was there to repair the bridge.

The employes now claim that Rule 88 which states in substance

"(a) Wrecking crews, * * * when needed, shall be composed of * * * carmen * * *." and

"(c) When wrecking crews are called * * * a sufficient number of the * * * crew will accompany the outfit."

in effect entitles the wreck crew "to perform all wrecking service outside of yard limits."

We do not agree with this contention because the language of the rule, as emphasized above, leaves to the management the determination of when the wrecking crew is needed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1958.

DISSENT OF LABOR MEMBERS TO AWARD No. 2792

We need not deal with the majority's erroneous finding that Rule 88 "leaves to the management the determination of when the wrecking crew is needed," since that is not the point in issue. The point is that while the carrier complied with Rule 88 by calling the wrecking crew it ignored the rule when it used other than members of the wrecking crew to complete the wrecking service for which the claimants had been called.

R. W. Blake

Charles E. Goodlin

T. E. Losey

E. W. Wiesner

James B. Zink