

Award No. 4268

Docket No. 4066

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 Great Northern Railway Co. violated the current agreement when they hired a private crane to rerail a freight car at Willmar, Minnesota, on June 21, 1960.

2. That the Carrier be ordered to compensate Carmen W. Tutko, E. Wuollet, P. Wuollet, M. Burns, E. Hines, J. Cardinal and R. Olsen, regularly assigned members of the Minneapolis Wrecking Crew, each in the amount of eight hours, at the rate of time and one-half for June 21, 1961 account of said violation.

EMPLOYEES' STATEMENT OF FACTS: Great Northern Railway Company, hereinafter referred to as the carrier, maintains a complete wrecking outfit on the Willmar Division located at Minneapolis, Minnesota. Carmen W. Tutko, E. Wuollet, P. Wuollet, M. Burns, E. Hines, J. Cardinal, and R. Olsen, hereinafter referred to as the claimants, are members of the regularly assigned crew.

At 11:45 A. M. on June 21, 1960, a freight car was derailed at Willmar near the Tenth Street crossing. The main line was blocked and traffic was not obstructed. The car was completely off the track and off its trucks.

There are no carmen employed at Willmar, but there were two road carmen working in the vicinity, and they, along with a derrick and manpower hired from the Anderson Garage in Willmar, were recruited to perform this wrecking service.

The derailed car remained in the position for two hours, after which time the outside crane arrived, and the work of replacing the wheels (trucks) under the car and restoring the rewheeled car to the rails began. The car was rerailed shortly after 4:00 P. M.

3. Previous awards of this Board recognize that rerailling freight cars is not within the exclusive jurisdiction of carmen, and that practice prevails on this property.

4. There is nothing in Rule 88 or in any other rule or agreement which prohibits or limits the carrier's right to utilize any necessary equipment in performing rerailling operations.

5. There were no carmen in the Minneapolis wrecking crew who were qualified to operate the truck crane which the management determined was needed to assist the local carmen in the safe and efficient rerailling of the car at Willmar.

6. Previous awards of this Board have denied similar claims under similar circumstances.

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.

On June 21, 1960, a loaded freight car was derailed at Willmar, Minnesota, and the Carrier summoned two carmen working in the vicinity and they, with the aid of a derrick and operator hired from a Willmar garage, rerailled the car.

Carrier maintains a complete wrecking outfit on the Willmar Division, which crew is located at Minneapolis, some 91 miles distant from Willmar. Claimants are the regularly assigned members of this crew, and allege a violation of Rule 88 of the controlling agreement by the Carrier when it recruited outside manpower and equipment to perform this wrecking service.

The situation and time elements involved become important to our consideration of this dispute.

From an examination of the record we find that the derailment occurred at 11:45 A. M.; that the car was in a precarious position and was kept from tipping over by the coupling to the engine; and that while not blocking a main line, it was disrupting switching operations to the main line.

We find that the two carmen arrived at the scene at 1:30 P. M., and the crane and operator about 1:50 P. M., and that the car was uprighted at about 2:40 P. M., when the crane and operator left and the two carmen continued the rerailling and with the aid of the switch engine had the car back on the tracks at 4:00 P. M.

In the emergency situation presented, it was management's decision to proceed as it did or to call the wrecking outfit from Minneapolis.

We find that in the circumstances here, the Carrier was exercising its managerial prerogative to expedite a dangerous and emergent situation and was not acting in violation of the controlling agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1963.