

Award No. 4570

Docket No. 4324

2-GN-CM'64

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 current agreement was violated when the Carrier sent other than the regularly assigned members of the Klamath Falls Wrecking Crew to rerail cars on January 27, 1961.

2. That accordingly the Carrier be ordered to compensate Carmen W. B. Galloway, E. H. Bucholz, G. F. Mitchell, R. W. Malcomb and D. Yerkovich, regularly assigned members of the Klamath Falls wrecking crew for nine & one-half (9½) hours each, at the rate of time and one-half for January 27, 1961 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. Carmen W. B. Galloway, E. H. Bucholz, C. F. Mitchell, R. W. Malcomb and D. Yerkovich, hereinafter referred to as the claimants, are the regularly assigned members of this wrecking crew.

At approximately 11:30 A. M., January 27, 1961 four carmen from the overtime call list were sent by company highway truck to a derailment on the OC&E Ry. property. The OC&E Ry. does not employ any carmen of its own and is currently operated by the Great Northern Ry. Co., the carrier, in the instant dispute. Upon arrival at the scene of the derailment, which involved six Weyerhaeuser log flat cars Nos. 435, 605, 630, 424 and 261, the carmen were furnished additional help consisting of six section men, a TD 14 caterpillar owned by Henry Allen, and an D-7 caterpillar owned by the Weyerhaeuser Timber Company.

The cars were rerailed and the four carmen returned to home point at 9 P. M., January 27, 1961.

For the foregoing reasons, the carrier respectfully requests that the claims of the employees 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Claimants are regularly assigned members of the Carrier's wrecking crew at Klamath Falls, Oregon.

On January 27, 1961, a derailment occurred on the Oregon, California and Eastern Railway Co. The OC&E lines connect with those of Carrier and in fact the OC&E is jointly owned by the Carrier and the Southern Pacific Co.

At the request of the OC&E, Carrier furnished four Carmen and some sectionmen to assist with the wreck on the OC&E property. In addition, the OC&E utilized some of its own sectionmen, some private equipment and employees, and a tractor owned by the Weyerhaeuser Company, to accomplish the wrecking service.

Rule 88 of the controlling agreement reads in part as follows:

“ * * *

When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. * * *

* * * ”

It is the position of the employees that there was an illustrated need for a full wrecking crew here, and that they should have been called.

Carrier contends that the current agreement does not give Great Northern employees any rights to perform work on the property of another Carrier.

Carrier also raises the question of jurisdiction. in that no third party notice has been given to the Brotherhood of Maintenance of Way in accordance with Section 3, First (j) of the Railway Labor Act whose members, the Carrier maintains, are employees “involved” in this dispute.

There has been no showing that any employees other than the Claimants are directed and materially involved in this dispute within the meaning of Section 3 (supra), and accordingly, we find that no third party notice was required.

The fact that the involved Carrier is a joint owner of the OC&E has no bearing on this dispute, since the controlling agreement is between System Federation No. 101 and the Great Northern Railway Company (including King Street Station), and no other parties.

The Scope Rule of the agreement reads as follows:

"It is understood that this agreement shall apply to those who perform the work specified herein in the **Maintenance of Equipment Department and all other Departments of this Company wherein work covered by this Agreement is performed, except where covered by other Agreements on the effective date hereof.**" (Emphasis ours)

Conceding, for the purposes of this Award, that wrecking service was here involved within the meaning of Rule 88 (supra), nevertheless, it was not wrecking service within the scope of the controlling agreement to which these Claimants would be entitled. Claimants have no contract rights on the property of the OC&E, nor can the Great Northern bestow any such rights upon its Carmen under the controlling agreement. The OC&E can conduct its business as it sees fit, within the scope of whatever agreements may exist on its property with its employees.

It was the prerogative of the OC&E to determine how this work should be done and by whom. Neither the Great Northern nor its Carmen could direct otherwise. Claimants had no contractual right to the work here in question.

AWARD

Claim 1: Overruled.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry Passaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July, 1964.