

Award No. 4572

Docket No. 4326

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 EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier did not properly compensate the claimants for performing work incidental to clearing of the derailment at Berthold, North Dakota on January 25, 1961.

2. That accordingly, the Carrier be ordered to compensate Carmen J. Rasmuson, L. Nichols and R. Thymian in the amount of 4 hours at the straight time rate of pay because of said violation. Further, that the Carrier be ordered to compensate all other carmen who performed this work at the derailment subsequent to the initial claim.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, maintains at Minot, North Dakota a wrecking outfit and a regularly assigned wrecking crew.

The carrier also maintains an overtime call list for the employees who wish to participate in working overtime. Carmen J. Rasmuson, L. Nichols and R. Thymian, hereinafter referred to as the claimants, are listed on the overtime call list and on the date of January 25, 1961 were the first men out for overtime call.

On the date of January 25, 1961 the claimants were called off the overtime call list and sent by company highway truck to the scene of a derailment at Berthold, North Dakota to augment the wrecking crew at the scene of the derailment. Their job at the scene of the derailment was to cut, with the use of an acetylene burning torch, all salvageable parts off the wrecked cars, and cut the cars so that the wrecker derrick and crew could load them into gondola cars. The claimants returned to their home point at the close of their shift. The next day other employees were taken from the overtime call list and sent to the derailment for the same purpose. This continued until the derailment

3. The carrier's definition of "wrecking service" is supported by past practice on the property, federal court interpretation of the hours of service act, and the decisions of this Board.

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.

Claimants are Carmen employed by the Carrier at its facilities at Minot, North Dakota.

On January 18, 1961, a derailment of 48 freight cars occurred at Berthold, North Dakota. Among other personnel and equipment, the wrecking outfit and crew from Minot were dispatched to the scene. Claimants were not regularly assigned members of the wrecking crew.

The Minot outfit and crew were returned to Minot on January 20, but were returned to the scene of the wreck on January 26, 27, 30, 31, and on February 1, 2, 3, 7, 8, 20 and 21.

On January 25, 1961, the Claimants were called from the overtime call list and sent out by highway truck to the site of the wreck. They performed the work of cutting and burning salvageable parts from cars, and cut up cars in order that they could be loaded into gondola cars. On various other days, other carmen were dispatched in the same manner and performed the same work. On some of the days that these carmen were worked in this manner, the Minot wrecker and crew were present, and on other days they were not.

Claimants and the other Carmen who were sent out in the same manner were paid under Rule 22(a), the Emergency Road Work Rule. They are claiming pay for themselves and the other carmen so sent out under Rule 22(c), the Wrecking service pay rule.

Carrier maintains that the Claimants were properly compensated because they were not engaged in wrecking service, but were engaged in the picking up of scrap and salvage which is not considered wrecking service.

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

"Wrecking crew, 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.

* * *

When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification."

In addition, Rule 88 provides that the regularly assigned crew will accompany the outfit. The Rule is silent as to how additional members shall be transported.

Concerning the work which Claimants performed, we have this day rendered our Award 4571 concerning similar work which we held to be wrecking service. That which we said there concerning the work performed is equally applicable here. These Claimants were engaged in wrecking service, and should be paid in accordance with the Rule.

AWARD

Claim 1: Sustained.

Claim 2: Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry Passaman
Executive Secretary

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