



Award No. 4767

Docket No. 4602

2-GN-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson 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 violated Rule 88 of the current agreement when they abolished two ground crew positions on the Great Falls Wrecking Crew.

2. That accordingly, the Carrier be ordered to reinstate Carmen John Besich and Lee Thompson on the wrecking crew position and compensate them for all time lost while this violation existed.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, maintains a fully equipped wrecking outfit and crew at its car department facility in Great Falls, Montana.

Carmen John Besich and Lee Thompson, hereinafter referred to as the claimants, are regularly employed in the Great Falls Car Department and prior to December 5, 1961 held positions of ground crewmen on the Great Falls wrecking crew. These assignments were incidental to their regular assignments and were obtained through bulletin.

On December 5, 1961 the local car foreman abolished all wrecking crew positions.

On December 7, 1961 Bulletin Number 73 advertised positions for one wrecking engineer and three wrecking crew members.

On December 10, 1961 the local chairman protested the bulletins and stated reasons therefor.

On December 11, 1961 the local foreman cancelled bulletin Number 73. On December 11, 1961 the local foreman also posted another bulletin advising that only two assignments were cancelled, those of the two claimants in this dispute.

On January 27, 1962 the local chairman protested the abolishing of these two positions.

no evidence was submitted to indicate that any supervisor did any work at any derailment which he could not properly perform under Rule 42(b), which reads as follows:

"42(b). This rule does not prohibit Foremen in the exercise of their duties to perform work."

Even if this board could find some rule or agreement which was violated in this case, the organization's demand for restoration of the two groundman positions is beyond the authority of this board to order. In any event, such a demand by the claimants and any other item of damages, became moot on or about September 26, 1963. On that date, two of the regularly assigned groundmen in the Great Falls wrecking crew resigned. When the two vacancies were bulletined, neither of the claimants filed applications. Only one man placed a bid and was assigned. Therefore, the Great Falls wrecking crew now has only two assigned groundmen due to the failure of the claimants and other employes to apply.

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. It is the fundamental right of the carrier to determine the number of employes to be assigned to wrecking crews unless the power to make such decisions has been limited by law or by some clear and unmistakable language in a collective bargaining agreement.

2. The organization bears the burden of proving that it has negotiated restrictions on the carrier's fundamental rights by pointing out clear and unambiguous contractual language to that effect.

3. Awards 2039 and 2554 of this board have held that Rule 88 does not contain any language which requires a minimum number of regularly assigned groundmen on wrecking crews, and also upheld the carrier's right to make the determination of the number of groundmen to assign.

4. The past practice of the carrier has been to change the number of groundmen from time to time on most wrecking crews, to maintain only the minimum number necessary, and to supplement the crews when necessary from the overtime call list. The actions of organization in the past constitute a recognition that such practices conformed to the intent of the parties at the time Rule 88 was negotiated.

5. The organization has recognized that two regularly assigned groundmen on a wrecking crew constitute a "full crew."

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 waived right of appearance at hearing thereon.

The claim is that the Carrier violated Rule 88 of the current Agreement when it abolished two ground crew positions on the Great Falls wrecking crew.

But except as limited by statute or agreement the Carrier has full control of its operations, and nothing in Rule 88 or elsewhere in the Agreement specifies any required number of groundmen on wrecking crews. The Carrier, having unilaterally set the number according to its discretion, can unilaterally change it, and neither the Agreement nor the law authorizes the Organization or this Board to overrule management's discretion in that regard.

In Award No. 2039, this Division correctly decided that Rule 88 requires wrecking crews to include some regularly assigned groundmen as well as derrick operators and firemen; but it also decided that since the number was not set by negotiation between the parties it must necessarily be determined by management. No other conclusion is possible under the Agreement as it stands.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1965.