

Award No. 4826
Docket No. 4654
2-GN-CM-'66

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 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 and operator plus other carmen to rerail six cars at Willmar, Minnesota on November 2, 1962.

2. And that accordingly the Carrier be ordered to compensate Carmen Merle Waldron, Edward Hines, Rudolph Olson, John Cardinal, Marcellus Burns, Paul Wuollet and Earl Wuollet, each, in the amount of twelve (12) hours, at the rate of time and one-half for November 2, 1962 account of said violation.

EMPLOYEES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier maintains a complete wrecking outfit on the Willmar Division located at Minneapolis, Minnesota.

Carmen Waldron, Hines, Olson, Cardinal, Burns, P. Woulet and E. Wuollet, hereinafter referred to as the claimants, are members of the regularly assigned crew and were ready and available on the date of this dispute.

On the date of November 2, 1962, at 6:00 PM, a crane from the Harold Anderson Garage, in Willmar, two men from the Anderson Garage and two carmen from Benson were used to rerail stock cars GN 55947, 56013, 55290, 56055 and 56227. The derailment took place in the Willmar Yards, Willmar, Minnesota.

Prior to January 1959 the point of Willmar employed a regular force of carmen and maintained a fully equipped wrecking outfit and crew.

In January 1959 carrier abolished all carmen's jobs at Willmar, furloughed all carmen, and moved the wrecking derrick outfit at Minneapolis.

Two new points known as Benson and Litchfield were set up by the carrier to handle emergency repairs along the road. The carmen, who assisted the crane in the rerailing of the six stock cars, are employed at Benson, a point approximately 40 miles from Willmar.

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 waived right of appearance at hearing thereon.

This claim involves an incident similar to that in Award No. 4825 at the same point and about one month later. During switching operations at carrier's stockyards there six stock cars were derailed, three of which held cattle and were being spotted for unloading in pens as required by federal law limiting the period for confinement of livestock in cars.

As the next parallel track was fifty feet away, a railroad derrick could have handled the derailment only one car at a time, with delay for the movement of derrick and rerailed car after each rerailment. Consequently in this emergency the carrier did not call the Minneapolis wrecker, which was one hundred miles away, but had the rerailing done by local carmen with the rented truck crane and operators. Under the circumstances the Minneapolis derrick was not suitable, necessary nor reasonably available, and we cannot conclude that the Claimants were entitled to be called.

The Employees contend that the emergency issue was not raised on the property. However, in his letter of December 23, 1963, to the General Chairman the Vice President mentioned several awards, including 4268 as having been cited by Staff Officer Melberg in a conference on July 22, 1963, and said:

"The last of these seven awards, 4268, was singled out as being worthy of your most careful consideration, since it involves a case essentially identical to the instant case."

In his reply of January 8, 1964, the General Chairman said:

"This is to advise you that you have been misinformed as Mr. Melberg did not refer to any of the awards listed in your letter of December 23rd, with the exception of Award 4268. I advised Mr. Melberg that the facts and circumstances involved in the instant dispute were not the same as those involved in Award 4268 and therefore, the basis upon which that award was rendered was not relevant in the instant case."

According to the latter statement Award 4268 was not only cited but was the sole authority relied upon by the Carrier in that discussion, and further, it was considered by the General Chairman.

The two final paragraphs of the Findings in Award No. 4268 are as follows:

"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 existing agreement."

In view of this record we cannot conclude that the emergency issue was first raised on presentation to this Board.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.