Award No. 4830
Docket No. 4663
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 EMPLOYES' DEPARTMENT, A. F. OF L. - C. I. O. (Carmen)
GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement other than Carmen were improperly assigned to rerail engine within yard limits on October 5, 1962.

2. That accordingly the Carrier be ordered to compensate Carmen Henry Stack, Noble Melin, Bernard Dault and Roy Anderson in the amount of 2-2/3 hours, at the rate of time and one-half account of said violation

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, maintains car repair facilities at Superior, Wisconsin. Carmen Henry Stack, Noble Melin, Bernard Dault and Roy Anderson, hereinafter referred to as the claimants, are listed on the Superior, Wisconsin Carmen Department Seniority Rosters as carmen mechanics. The claimants are also regularly assigned members of the wrecking crew, stationed at Superior and perform all wrecking service in or out of yard limits.

At approximately 3:00 A.M., on the morning of October 5, 1962, LST&T engine No. 103 was derailed on Great Northern Ry. Co. property while making delivery of cars to the carrier. Instead of calling carmen from the Great Northern Ry. Co., on whose property the derailment occurred, to assist in the rerailing of this engine, sectionmen were called from the Lake Superior Terminal and Transfer Ry. to come over to the carrier's property and assist in the rerailing of the engine.

Claim was initiated for this violation on October 14, 1962, subsequently handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

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 other than carmen were improperly assigned to rerail an engine within yard limits at Superior. The Lake Superior Terminal and Transfer Railway (LST&T) is a separate corporation formed by Carrier and three other railways. It owns and operates yards and tracks at Superior; its business consists principally of transferring freight cars between its yards and adjacent industries, and between its yards and connecting carriers' lines, for which purpose it has the right to use Carrier's transfer tracks.

On this occasion, while delivering freight cars to the Carrier, an LST&T switch engine derailed its leading truck on one of Carrier's interchange tracks. The foreman of the switch crew reported the derailment to his superior who sent an LST&T section foreman and four sectionmen to help the switch crew rerail the engine.

The Employes' position is that since the derailment occurred on the Carrier's property they were entitled to the work in preference to LST&T sectionmen, under the second clause of the second paragraph of Rule 88, which provides that for wrecks and derailments within yard limits sufficient carmen will be called to perform the work. In the Employe's Rebuttal they say:

> "We have no quarrel with the carrier if the train crew had performed this rerailing, but when it was found necesssary to obtain assistance in rerailing this engine, the carmen of the Carrier were the proper employes to be called, not the sectionmen from another railroad."

The Carrier contends and the Employes deny, that before the Agreement became effective in 1949 it had been the established practice for the LST&T to rerail its own equipment wherever derailed, except when a derrick was necessary, which it lacked. Statements by the present and preceding superintendents of LST&T testify to that practice since 1952, but show only two prior instances of such rerailing on the Carrier's property. On the other hand, the record includes the statements of four Great Northern carmen that they have rerailed equipment derailed by LST&T switch crews on Carrier's tracks. This evidence is not sufficient to show the established practice asserted by the Carrier.

There seems to be a lack of precedents involving like occurrences; but Award 4570, cited by both parties, constitutes a reverse precedent. The case arose from a derailment of Oregon, California and Eastern Railway Company (OC&E) equipment upon its own property. At its request this Carrier sent four carmen and some sectionmen to help, and the claim was that under Rule 88 the full wrecking crew should have been called. This Division said:

> "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 Claimants would be entitled. Claimants have no contract rights on the property of the O. C. & E., nor can the Great Northern bestow any such rights upon its Carmen under the controlling agreement. The O. C. & E. can conduct its business as it sees fit, within the scope of whatever agreements may exist on its property with its own employes.

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

This case is quite different, for here the derailment occurred on Carrier's property, where the Claimants do have contract rights, and where the Carrier can direct how derailments shall be handled. The Carrier argues that the Scope Rule limits the Agreement to the Carrier's own work; but it does not do so specifically, and reasonable inference would equally well include work on its property and within its control, as emphasized in Award 4570. Certainly, in the absence of proof to the contrary, the presumption should include such work. Therefore Claim 1 should be sustained.

However, the Claimants are members of the wrecking crew, who are not entitled to this work on derailments within their yard limits. They contend that by practice they have performed all rerailing there; the Carrier denies this, states that such rerailing is done by carmen on duty, and points out that at the time of this occurrence Claimants were not on duty. But regardless of the facts, the wrecking crew does not have contractual rights over wrecks and derailments within their yard limits.

A W A R D

Claim 1 sustained.

Claim 2 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.

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