

Award No. 4898

Docket No. 4799

2-GN-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES
DEPARTMENT, AFL-CIO (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Great Northern Ry. Co. violated the current agreement when they used a caterpillar tractor, sectionmen and other carmen to rerail a car at Trenton, North Dakota on May 21, 1963.

2. And that accordingly the Carrier be ordered to compensate Carmen W. Morden, K. Geyer, C. Gilday and G. Fix each, in the amount of seventeen hours (17), at the rate of time and one-half account of said violation.

EMPLOYEES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, maintains two complete wrecking outfits at Minot, North Dakota. Carmen Morden, Geyer, Gilday and Fix, hereinafter referred to as the claimants, are members of the regularly assigned wrecking crew and were ready and available for call on the date of this dispute.

On the date of May 21, 1963, two carmen from Minot, two carmen from Bainville assisted by section men and a state-owned caterpillar tractor were used to rerail car ATSF 149259. No emergency was involved as this car had been deliberately turned over on its side to get it off the right of way some time previous to the date these men were sent out to place it back on its trucks and rerail it.

Time claimed by the claimants in this dispute is for traveling time to and from the scene of the derailment plus time taken to rerail the car.

This dispute has been handled with all carrier officers authorized to handle grievances, including the highest designated official, all of whom have declined to make satisfactory adjustment.

4. There is nothing in Rule 8 or in any other rule or agreement which prohibits or limits the carrier's right to utilize any necessary equipment in performing rerailling operations.

5. Rule 88 gives the carrier the option of using or not using its regularly assigned wrecking crews and heavy-duty wrecking derrick outfits at wrecks or derailments.

6. There were no carmen or other employees of the carrier who were reasonably available and qualified to operate the caterpillar tractor which management determined was needed to assist the highway truck crews in the safe and efficient rerailling of the car at Trenton.

7. The rerailling procedures followed at Trenton conformed with long-established practices on the property.

8. The carrier has consistently rejected claims of the type presented in the instant case, and the organization either has acquiesced in the carrier's rejection or has withdrawn such claims without reservation.

9. Such action by the organization is convincing proof that regularly assigned wrecking crews do not have the exclusive work rights claimed in the instant case.

10. The organization has had a wholly inconsistent claim sustained by this board in Second Division Award No. 4596.

11. The organization is estopped from alleging that the carrier violated the schedule agreement in the instant case.

For the foregoing reasons, the carrier respectfully requests that the claim 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 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.

Claims are made on behalf of Carmen W. Morden, K. Geyer, C. Gilday and G. Fix, for compensation for seventeen (17) hours each, at the time and one-half rate, on May 21, 1963, when Carrier allegedly used a caterpillar tractor, sectionmen and other carmen to reraill a car at Trenton, North Dakota. That such action by Carrier was a violation of Rule 88, of the Agreement between the parties. That as a result of such action Carrier further violated the provisions of Rules 17 and 22 of said Agreement.

Carrier contends that it has in no manner violated the provisions of Rule No. 88, of the Agreement, as contended by the Organization. That Carrier was not required under the Agreement to use the Wrecking Crew as alleged, nor did it, in its judgment, require the use of the wrecking derrick equipment.

Under Rule No. 88, if Carrier had required the use of the wrecking crew and its heavy equipment, outside yard limits of Minot, Carrier would be required to call the regular crew for service, including the employees named here as claimants.

Carrier in exercising its prerogative of management, did not use the wrecking equipment from Minot, but used other employes to rerail the car with the use of other Carmen and Sectionmen and the use of a caterpillar tractor.

There is no evidence in the record here that Claimants had an exclusive right to work involved here. Nor is there evidence that Carrier acted in an arbitrary, capricious or discriminatory manner, in exercising its judgment to determine whether or not the use of the Wrecking Crew and its equipment were necessary to perform the work required here as alleged. The principles set out in Award No. 4190, this Division, are similar to the facts and circumstances here before us.

The record does not support a sustaining Award, nor allegations of a violation of Rules 17, 22 and 88 by Carrier.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1966.