

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Burlington-Northern, Incorporated, violated Rules 26, 82, 83 and 86 of the Controlling Agreement in effect on the Burlington-Northern, Incorporated, when they used other than the regular assigned wrecking derrick operator to rerail derailed cars at a derailment in the Allouez yard January 14, 1974.
2. That, accordingly, the Burlington-Northern, Inc., be ordered to additionally compensate regularly assigned Superior, Wisconsin wrecking engineer J. Karling in the amount of eight (8) hours at the pro rata (1) rate for his class for January 14, 1974.

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 Claimant, Carman J. Karling is the regularly assigned wrecking engineer for the Superior Wisconsin wrecking crew. A derailment occurred in the Carrier's Allouez yard, and on January 14, 1974, the Carrier assigned three on duty carmen to clear the derailment. These three carmen were also regularly assigned members of the wrecking crew based at Superior, with its 150-ton derrick and outfit, and a regular crew of six including four ground crew members, a wrecker foreman and the wrecker engineer. In the instant case the three carmen were assigned as carmen and not as members of the wrecking crew. The Carrier utilized a 30-ton Maintenance of Way Crane, X-1859, to assist in clearing the derailment. The operator of the crane was represented by the BMW.

The Carmen's Organization contends that the Carrier in effect recruited a wrecking engineer from outside the Carmen's craft, when the BMW crane operator was utilized to operate the M of W Crane. The Organization in effect considers the X-1859 crane to be a derrick, and asserts that a derrick was used in picking up the Allouez yard derailment, (Employee's Submission pp. 4, 10, 11). We find to the contrary on this contention. X-1859 is a 30-ton crane, it is not a 150-ton derrick, and is not a wrecking derrick.

The Organization contends that the Carrier did use the ground crew members of the Superior wrecking crew but did not use the engineer (Employee's Submission p. 3). We find that the Carrier did not use the "ground crew". The Carrier used three on duty carmen as it was entitled to do under Rule 86(b) for a derailment within yard limits. These men, while they were the regularly assigned members of the wrecking crew, were not used as such, but were assigned as on duty carmen. No rule of the Agreement restricts the Carrier to selecting only the 150-ton wrecking derrick as equipment to be used in the case of derailments within yard limits. We find that it was the Carrier's managerial prerogative to assign the appropriate equipment to assist the carmen in the rerailing work of the cars in the instant claim. There is conflict in the Awards of this Division as to whether or not other than a carman crane operator can be utilized in a situation such as we have before us. We do not reach a decision on the issue. For we find that the Organization has not sustained its burden of proof that Claimant in this instant case was qualified to operate crane X-1859. It is clear beyond question that the Organization is required to carry its burden of proof on all of the essential elements of its case. The Organization's treatment of the issue of the Claimant's qualifications to operate crane X-1859 on page 11 of its Submission in no way can be interpreted as sufficient evidence to support the necessary finding that the Claimant was qualified to operate crane X-1859. Nor can this Board draw an inference that because an individual is well qualified to operate a 150-ton derrick, that therefore the individual can operate a 30-ton crane. The record disclosed that crane X-1859 is a very different piece of equipment than the 150-ton derrick.

We will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July, 1976.