

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7124
Docket No. 6873-T
2-BN-CM-'76

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, Inc. violated Rules 7, 26, 82, 83 and 86 of the Controlling Agreement in effect on the Burlington-Northern, Inc., when they assigned other than the regularly assigned Havre wrecking crew and wrecking derrick to rerail derailed cars, repair damaged equipment at the site of a major derailment at Naismith, Montana on November 12 and 13, 1973.
2. That accordingly, the Burlington-Northern, Inc., be ordered to additionally compensate Havre Carmen E. Winchell, C. Johnson, H. Black, L. Golie and E. Wagner in the amounts of twelve (12) hours each for November 12, 1973 and thirteen (13) hours each for November 13, 1973, both dates at the time and one-half (1 1/2) rate.

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.

At approximately 4:45 P.M. on November 10, 1973, train 180 suffered a major derailment at Naismith, Montana, a point on the Shelby to Great Falls main track. The Havre wrecking derrick and crew was called to the scene of the derailment along with two contractor supplied tractors. By noon of the next day, November 11, 1973, the main line was cleared and the Carrier released the outside contractor's equipment and it also released the Havre wrecking derrick and crew. When the Havre wrecking crew was released, work of rebuilding of trucks and wheels and a major amount of rerailing work still remained to be done. The Vice President Labor Relations' Letter of October 31, 1974, states in part:

"... Therefore, on the claim dates, two Great Falls Carmen, R. Walznak and C. Hendrick, together with Assistant Car Foreman C. Cislo were sent to Naismith to perform the necessary work in rebuilding trucks and wheels and other carmen's duties in connection with the contemplated rerailing. They were assisted in this phase by Maintenance of Way Cranes BN 975411 and BN 975406...."
(Carrier's Exhibit No. 8, p. 1)

The two carmen involved stated in part:

"When we arrived at Naismith about 11:00 A.M. on November 12, 1973 we found two maintenance of way derricks and a section crew waiting for us. The section crew proceeded to assist us to rerail from 11:00 A.M. to 5:00 P.M. on November 12, and from 7:00 A.M. to 3:00 P.M. on November 13, 1973. They assisted in rebuilding trucks, handling and hooking of cables, and blocking of outriggers; work normally done by Carmen." (Employees' Exhibit K)

We find that the work of rebuilding of trucks and wheels of freight cars is properly Carmen's work. Such work is within the clear and unambiguous language of Rule 83, "Carmen's work shall consist of building, maintaining, dismantling (for repairs)...all...freight cars." We find that Carmen were entitled to all the work involved in the rebuilding of the trucks of the freight cars at the derailment scene. The Carrier does not defend that the wrecking derrick could not handle the necessary work, for quite obviously it could. A Carman wrecking engineer was available at the very scene to operate the derrick. Carmen

members of the wrecking ground crew were available to do the blocking work of the outriggers of the Havre derrick and were available to perform the handling and hooking of cables for the rebuilding of the trucks. Yet, in the face of the presence of the Havre derrick and Carmen wrecking crew, the Carrier chose to release the Carrier's "Carmen" equipment and the Carmen wrecking crew and relieve them, starting the very next day, with two Carmen from Great Falls, two Maintenance of Way cranes, and a number of BMW section men. Since, as we said above, all the work involved relating to the rebuilding of trucks of freight cars in this case is exclusively Carmen's work, and is not BMW work, we find the assignment of BMW crane operators and section men to a portion of this work was wrongful. In Award No. 4898 and Award No. 7071 and other awards as well, all involving these very same parties, this Board identified that it would consider whether there was evidence that the Carrier acted in an arbitrary, capricious, discriminatory or unreasonable manner, in exercising its judgement to determine whether or not the use of the Wrecking Crew and its equipment were necessary to perform the work required. We find that the Carrier's release of the wrecking derrick and crew under the circumstances of the instant case was arbitrary and unreasonable; and was a clear abuse of its managerial prerogative. We point out no emergency existed at the time of the decision to release the wrecking crew while the above described work remained to be completed. We shall sustain the claim as restricted below.

This award is an extremely narrow award limited to the narrow circumstances of the instant case. We need not and therefore should not reach any general conclusion on the exclusivity of rerailling work outside of yard limits. It should be recognized, however, in the instant case that if the Carrier had properly assigned the Wrecking Crew to the work involved in rebuilding the trucks of the freight cars, the crew would have been present and available to complete the major rerailling work.

A W A R D

Claim sustained as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of September, 1976.