

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
( Burlington Northern Inc.

Dispute: Claim of Employees:

- 1) That the Burlington Northern, Inc., violated the terms of the current agreement, in particular, Rule 7 and Rule 86, when they failed to call the regularly assigned wrecking crew for service to accompany wrecking derrick on December 15, 1978.
- 2) That accordingly, the Burlington Northern, Inc., be ordered to additionally compensate Missoula, Montana Carmen R. T. Kohler (wrecker engineer), J. W. Masters, R. L. Chilcoat, A. E. Gallagher, R. J. Peterson and G. G. Nelson in the amount of seventy-eight (78) hours for each Claimant 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.

On November 3, 1978, the Carrier had a major derailment at Big Timber, Montana. Wrecker crews were called to the site from both Laurel, Montana, and Missoula, Montana. Big Timber is a point that lies in between Missoula and Laurel. It is 65.9 rail miles west of Laurel and 276.6 rail miles east of Missoula. At this time the Laurel wrecking crew was assigned to use Derrick D-255 and the Missoula crew used Derrick D-256. On November 5, 1978, the main line was cleared and the Missoula crew and Derrick D-256 were ordered back to Missoula while the Laurel crew remained with Derrick D-255 at the derailment in order to continue picking up damaged cars, etc. Approximately December 10, Derrick D-255 broke down and had to be shipped to Hillyard, Washington, for repairs. As a result, the Missoula crew and Derrick D-256 returned to Big Timber. On December 12, an Amtrak passenger train derailed in Missoula and the Missoula crew returned there from Big Timber to rerail that train which was completed December 14. It is also undisputed that Carrier tentatively advised the Missoula Crew on December 14 that they would return to Big Timber December 17. However, on December 15, the Carrier reassigned Derrick D-256 to Laurel. This was accomplished via a telegram from Carrier's Director-Mechanical J. S. Simpson which read "effective December 15, 250 ton

wrecker D-256 is assigned to Laurel Car Shop and 100 ton wrecker D-105 is assigned to Missoula Car Shop until further notice".

The events after this telegram, however, are factually disputed. In the Organization's submission they suggest that there was no transfer of the Derrick, that instead it was moved only for the purpose of use at the derailment. Further, in this light, they suggest that the Laurel crew arrived at Big Timber separately from the Derrick D-256. In this regard, we observed the following statements from different segments of the Organization's submission:

"On December 15, 1978, at 8:00 a.m., the Missoula derrick D-256 without the assigned crew was dispatched to the site of the November 3, 1978, derailment via Laurel, Montana. The Laurel wrecking crew departed from the Laurel Shops on December 18, 1978, arriving at the site of the derailment on the same date, and proceeded to clean up the wreck, completing the service on December 19, 1978." (Emphasis added)

"It is respectfully submitted that the Carrier violated the terms of the controlling agreement, specifically Rules 7 and 86 when they failed to call and assign the regularly assigned Missoula wrecking crew to accompany the wrecking derrick D-256 on December 15, 1978, to the site of the Big Timber, Montana, derailment." (Emphasis added)

"... thus permitting the Laurel Crew to accompany the derrick D-256 is in fact a flagrant violation of the aforementioned schedule rules, enlght of the fact the Missoula wrecker D-256 was being transported to a pre-existing derailment."

The Carrier, however, contends that factually speaking a transfer of equipment did take place. They argued:

"In a vain attempt to support this claim, the Organization contended that Wrecker D-256 was dispatched to the site of the Big Timber derailment from Missoula via Laurel, but that is not what occurred here. Big Timber is an intermediate point between Missoula and Laurel. It is 65.9 rail miles west of Laurel and 276.6 rail miles east of Missoula, so it is obvious that the wrecker was not sent to Big Timber via Laurel. In addition, as the Organization itself pointed out, Wrecker D-256 departed Missoula at 7:45 p.m. on December 15 and arrived at Laurel at 2:30 p.m. on December 16. It **remained** at Laurel until 4:00 a.m. on December 18. Remaining as it did at Laurel, from the afternoon of December 16 until the morning of December 18, it is apparent that, rather than being dispatched to the site of the derailment at Big Timber, the wrecker was transferred to Laurel, and two days after arriving there it was dispatched to the site of the derailment, accompanied by the regularly assigned Laurel crew."

Without passing as of yet whether a transfer of equipment took place, the Board must reconcile these two slightly differing views as to how the Derrick D-256 got from Missoula to Big Timber. In this determination, we agree with Carrier's version. The initial claim as submitted by the Organization on the property dispels any contrary suggestion as found in the Organization's submission. It is clear that the Derrick D-256 left Missoula at 8:00 a.m. December 15 and arrived December 16 at 2:30 p.m. in Laurel (after passing through Big Timber). The Derrick remained there until December 18th at 4:00 a.m. when the Derrick, with the Laurel crew accompanying it, proceeded to Big Timber. They remained there until December 19 and arrived back in Laurel at 7:00 a.m. that date.

The Organization contends that the Carrier's actions violated Rule 86, which reads:

"(a) Wrecking crews, including derrick operators and firemen, will be composed of carmen who will be regularly assigned by bulletin and will be paid as per Rules 5 and 6.

(b) When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within the yard limits, sufficient carmen will be called to perform the work.

(c) Meals and lodging will be provided by the Company while crews are on duty in wrecking service.

(d) When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification." (Emphasis added by the Organization.)

In light of their understanding of the facts, the Organization contends that because the Missoula crew was the regularly assigned crew, within the meaning of 86 (b), they had the right to accompany the Derrick D-256 and perform the service at Big Timber. This is so because in their opinion, Derrick D-256 was moved only for the singular purpose of wrecking service at the derailment site. They contend it is untrue the Derrick was transferred to Laurel prior to performing wrecking service. They argue vigorously that the Carrier cannot abrogate their contractual obligation to the wrecking crew at Missoula by assigning via telegram their Derrick to Laurel. If this were allowed, the Carrier, when derailments occur, would merely be required to "dispatch a telegram to assign the wrecker outfit to the derailment site, and assign carmen from the nearest point".

The hours requested in the claim represent the time involved in traveling to and from Big Timber had the Missoula crew been used and the actual time spent there by the Laurel crew. This is supported by Rule 7.

The Carrier's position is that they are not restricted by contract from transferring equipment from one point to another. In this view, the movement of D-256 from Missoula to Laurel was a transfer of equipment and not a mere movement of the wrecker outfit to a derailment site where it was joined by carmen

from the nearest point, as contended by the Organization. Nothing in Rule 86 or Rule 7 or any other part of the contract would alter the rights reserved to the carrier including the implied right to transfer equipment. Because the equipment was transferred and assigned to Laurel two days before it was sent to Big Timber, there can be no doubt the Carrier argues, that Rule 86 and 86 (b) in particular were complied with. As the Carrier argues, this is because the Laurel wrecker crew was the crew assigned to D-256 and they did accompany the Derrick. Further, the Carrier argues, the remedy requested by the Organization is excessive for a variety of reasons.

The task of the Board as we see it is to make a determination whether the movement of the equipment was indeed a transfer as the Carrier argues or whether it was simply a movement for the use of the Derrick at the derailment. If the latter is the case, a sustaining finding would be in order because as the reasoning in Award 4509 (Referee McDonald) cited by the Organization suggests, a Carrier cannot avoid allowing an assigned crew to accompany a wrecker (Derrick) to a derailment when it is called or moved simply for use at a specific derailment. While 4509 is not on all fours with the instant case, it is relevant enough. As it was stated in the award:

"Carrier seeks to call this a transfer of equipment from Portland to Salem, but it is clear from this record that the outfit was called for use at the Bush derailment.

Under the Rules of the controlling Agreement and former Awards of this Division, it is abundantly clear that this and similar Rules considered by us require that claimants should have accompanied the wrecking outfit when it left Portland."

However, on the other hand, if it is established that the movement was a transfer of equipment, i.e. one for more than the purpose of use at a singular derailment, then the claim must be denied because as the Board sees it there is no restriction, in the contract or any established by past practice, on the Carrier's right to transfer equipment from one point to another.

In considering the respective positions of the parties, we are of the opinion that the Carrier's arguments are more sound and that they have proved their point that the movement was a legitimate transfer of equipment. We believe that a legitimate transfer of equipment was effectuated for several reasons. First, the movement of the equipment didn't go directly to the derailment site, it went to Laurel first. Second, the equipment remained at Laurel for a significant period of time before moving to Big Timber. Third, the Derrick was returned to Laurel after the work at Big Timber was completed and still remains there. To the knowledge of the Board D-256 still remains at Laurel because when D-255 was repaired it was assigned to Missoula. Fourth, there is no evidence that the movement was made to avoid payments to the Missoula crew. There is simply too much evidence that indicates that the Carrier's primary motivation was based on business necessity. Because D-255 had been broke and was shipped to Washington, there was a real and compelling need to have a Derrick assigned at Laurel. It is noteworthy in this regard that another Derrick was assigned to Missoula.

The Board may have been persuaded differently if it were shown that the Carrier exercised its right to transfer equipment arbitrarily or without reason or out of animus toward the Missoula crew. However, in light of the legitimate business reasons that existed for the move, we must find for the Carrier.

The Carrier's reasoning was adopted as well because of the implications of the decision urged by the Organization. As it seemed the Organization would effectively have each crew "own" the wrecker assigned to it. The absurdity of this is obvious. If this were true the Carrier would never be able to realign its equipment.

We also wish to state that we understand the frustrations of the Missoula crew at the nature of the Carrier's on-again off-again decision to send them and not send them to Big Timber on the 17th. Hopefully, the Carrier now understands this and intends to be more decisive in the future. However, while we understand the employees' frustration, the Carrier's hesitancy and undecisiveness are not compelling enough to establish a violation of the Agreement.

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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of April, 1981.