

Award No. 3629
Docket No. 3229
2-C&NW-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the provisions of the controlling agreement, the Carrier on September 17, 1957, violated said agreement by hiring from a private concern at Wausau, Wisconsin, a 20-ton crane along with operator, for the purpose of clearing a 5-car wreck at Eland, Wisconsin.

2. That accordingly, the following designated Carmen be compensated at time and one-half rate for ten (10) hours' pay each, beginning 3:30 P. M. on September 17, 1957 and ending 1:30 A. M. September 18, 1957.

H. Hill	Wrecker Derrick Engineer
A. T. DeGrief	Wrecker Derrick Fireman
C. H. Amenson	Wrecker Derrick Groundman
C. A. Boehm	Wrecker Derrick Groundman

EMPLOYES' STATEMENT OF FACTS: Carmen H. Hill, A. T. DeGrief, C. H. Amenson and C. A. Boehm, are regularly employed by the carrier with assigned hours from 7:00 A. M. to 3:30 P. M. Monday through Friday, with Saturday and Sunday as rest days. The claimants are a part of the wrecking crew located at Green Bay, Wisconsin.

On September 17, 1957 a wreck occurred within the yard limits at Eland, Wisconsin, a distance of 65 miles from Green Bay, Wisconsin. Eland, Wisconsin is within the area serviced by wrecking crew located at Green Bay, Wisconsin. Five (5) cars were involved in the wreck, four (4) of which were derailed and one (1), a tank car of acid, was turned over on its side with one end of the car about 12 feet from the track and the other about 30 feet from the track.

equipment furnishing such power. As previously indicated, it has been the practice to furnish power for rerailling equipment, and to upright equipment, by the power furnished by the locomotive or by other type power not manned by carmen in many instances involving minor wrecks or derailments where use of the wrecking derrick is not required.

The carrier therefore submits that under the controlling agreement in effect between the carrier and System Federation No. 12, it is specifically permitted to call only such parts of wrecking crews as are required for wrecks or derailments. In this case the carrier called as many of the wrecking crew as were necessary to reraill the cars. The carrier further wishes to point out that the second paragraph of rule 127 specifically constitutes recognition by the organization that where the use of the carrier's wrecking derrick is not required, it constitutes a "minor derailment", and that work in connection with such derailment does not belong exclusively to carmen.

The carrier therefore submits that the controlling agreement in effect between the carrier and System Federation No. 12 not only does not support the claim, but in fact precludes a sustaining award in this case. Where, as here, the controlling agreement specifically recognizes the right of the carrier to do what was done in this case the agreement is not violated when the carrier acts in accordance with the agreement. The carrier therefore submits that this claim must be denied in its entirety.

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.

Five freight cars (including a tank car of sulphuric acid which tipped on its side and spilled its contents) were derailed at Eland, Wisconsin, on September 16, 1957.

On the following day four carmen and two auto truck drivers who were members of the Green Bay wrecking crew were sent to the scene by motor truck. A bulldozer and its operator furnished by an outside concern rolled the tank car in an upright position, and the five cars mentioned were rerailed with the assistance of the members of the wrecking crew by pulling the derailed cars with a switch engine and frogging them on.

The employes maintain that the carrier violated Rules 126 and 127 of the applicable agreement in using the services of a privately owned bulldozer and its operator in lieu of calling the wrecking derrick and wrecking crew. Claim is presented on behalf of four members of the Green Bay wrecking crew who were not used in this instance.

Rule 126 provides that wrecking crews shall be composed of regularly assigned carmen and Rule 127 provides as follows:

"All or part of regularly assigned wrecking crews, as may be required, will be called for wrecks or derailments.

"This does not preclude using other employees to pick up or clear minor derailments when wrecking derrick is not needed."

It will be noted, therefore, that such part of a wrecking crew as is **required** is to be called for wrecks or derailments and that other employees may be used to pick up or clear minor derailments when wrecking derrick is not **needed**. (Emphasis ours)

The carrier relies on its decision that all of the wrecking crew was not required and that the wrecking derrick was not needed. This determination is controverted by the fact that it was necessary to use a privately owned bulldozer and operator to upright the tank car. The undisputed facts of record, therefore, indicate that a wrecking derrick was needed to aid in rerailing the tank car and the suggestion that the presence of spilled acid required the use of a bulldozer rather than a wrecking derrick is not convincing. In our Award No. 1322 we correctly declined to subscribe to a theory that it is a sole prerogative and responsibility of the carrier, depending on the nature of a wreck or derailment, to use or not to use a wrecking outfit and wrecking crews in connection with wrecks and derailments.

The carrier's primary decision that there is no need for a wrecking outfit is not absolute or binding, and in appropriate circumstances such as are disclosed in this docket, its decision will not be sustained.

On the basis of the facts here presented, therefore, we find that a wrecking derrick was needed and should have been called to perform the necessary work of rerailing the tank car and if the wrecking derrick had been called, these claimants should have accompanied it. Consequently, a sustaining award is required at pro rata rate. Our holding is confined solely to the work involved in rerailing the tank car. It was unnecessary under the Rules to call the entire wrecking crew to assist in rerailing the other four derailed cars.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1961.