

Award No. 4266

Docket No. 4057

2-GN-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the agreement when it replaced the Fargo Wrecking Outfit with a Burro Crane on March 17, 1960 at derailment at Hamburg, North Dakota.

2. That accordingly the Carrier be ordered to compensate the following carmen comprising the Fargo Wrecking Crew, H. Zehren, R. Cowie, D. Minette, E. Kloster, A. J. Zeis, J. W. Smith and G. Reese, for sixteen (16) hours at the rate of time and one-half because of said violation.

EMPLOYEES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, maintains wrecking outfits at both Fargo and Minot, North Dakota, with regularly assigned crews.

On December 10, 1960, the carrier called both the Fargo and Minot outfits to go to Hamburg, North Dakota to clear a wreck. In addition to the Fargo regularly assigned crew, the carrier added Carmen T. Zahren and E. Kloster to the Fargo outfit. The crew members who accompanied the Fargo outfit to Hamburg, North Dakota are named in part 2 of the employees' claim and will hereinafter be referred to as the claimants.

Before the wreck was cleared (the wreck was not cleared until March 24, 1960), the carrier released the Fargo crew at their home station and on March 17, 1960 substituted for the Fargo outfit a crane manned by the maintenance of way department. This outside equipment and manpower was used by the carrier in wrecking service to rerail some of the wrecked cars involved in this wreck.

This dispute was unsuccessfully handled with all carrier officers authorized to handle grievances, including the highest designated officer with the result that he too declined to adjust it.

7. The claimants are not entitled to recover damages even if the Board finds a violation of some rule in this case, for they would not have been used at Hamburg on March 17, 1960 in any event.

For the foregoing reasons the carrier respectfully requests that the claims of the employes 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.

On March 10, 1960, Carrier called its Fargo and Minot Wrecking outfits to Hamburg, North Dakota to clear a wreck on its main line.

Fargo is 146 miles from Hamburg, and Minot is 87 miles from Hamburg.

On March 11, the main line having been reopened, Carrier returned the Fargo derrick and crew to Fargo, and the Minot outfit remained at the scene.

On March 17, Carrier utilized a "Burro Crane" operated by one of its Maintenance and Way employes to assist the Minot crew and derrick to re-rail an empty box car and a flat car.

Claimants are the assigned members of the Fargo wrecking crew and cite a violation of Rule 88 of the controlling agreement by the Carrier when it used Maintenance of Way equipment and manpower to perform this wrecking service.

It is not disputed that the re-railing was wrecking service.

Carrier maintains that the rerailing of cars and other equipment has never been assigned exclusively to carmen in the railroad industry, and that Rule 88 does not prohibit it "from using the equipment it feels is needed in clearing up a wreck or derailment." (Carrier's Submission, P. 12)

Carrier cites Awards 2343, 3257, 3265 and 3286 in support of the first proposition above. A reading of these awards will show that they involved the "Yard Limit" problem, and in none of them was a wrecking crew called out. They have no application or persuasion to the facts of this case.

We have no quarrel with the Carrier's second proposition as long as the work is assigned to the craft entitled to it under the particular controlling agreement. For instance, the Burro Crane and operator here involved undoubtedly had a proper function at the scene of this derailment.

When a wrecking crew is called, we hold that the re-railing of cars and other equipment is Carmen's work.

Carmen were entitled to the work which was here performed by the Burro Crane and operator. We do not hold that these particular claimants were entitled to be called from Fargo, but we do hold that the Carrier was in violation of the controlling agreement when it assigned the Crane and operator to Carmen's work.

AWARD

Paragraph (1) of the claim is sustained.

Paragraph (2) of the claim is disallowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1963.