

**Award No. 4303**

**Docket No. 3962**

**2-GN-CM-'63**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Ben Harwood when the award was rendered.**

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**PARTIES TO DISPUTE:**

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

**GREAT NORTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

(1) That the Great Northern Railway Company violated Rule 88 of the current agreement when they augmented the Minot Wrecking Crew by using B&B Crane and Operator to assist the wrecking crew at derailment at Navajo, Montana on November 11, 1959.

(2) That the Carrier compensate the members of the Minot Wrecking Crew, W. Morden, K. Geyer, W. Geyer, J. Hanson, G. Fix and A. Freund, for four hours pay at the time and one-half rate on behalf of each man account of violation of Rule 88 of the current agreement.

**EMPLOYES' STATEMENT OF FACTS:** The Great Northern Railway Company, hereinafter referred to as the carrier, maintains two (2) wrecking outfits at Minot, North Dakota.

On November 11, 1959, the Minot wrecking crew with one of the derricks was ordered to Navajo, Montana to clear a wreck which had occurred several days prior thereto.

Enroute to the wreck the wrecking crew train stopped at Bainville, Montana and added a second outfit consisting of a derrick and operator from carrier's B&B Department. The second derrick and the B&B operator worked with the carmen clearing the wreck.

Claim was instituted in behalf of the above named carmen, hereinafter referred to as the claimants, and was handled through all stages with carrier officers authorized to handle grievances with the result that the highest designated carrier officer during conference on December 8, 1960, agreed to settle the claim but as of this date has not done so.

**Award 1954, Carmen v. AT&SF, Referee J. Glen Donaldson**, a privately-owned crane with a two or three-man crew was hired by the carrier to aid carmen in rerailling five cars which were derailed within yard limits. The award held that it was proper to use the outside crane under circumstances where the regular wrecking derrick was located 219 miles away and none of the available carmen were qualified to operate the crane.

In **Award No. 3254, Carmen v. W.P., Referee Roscoe G. Hornbeck**, it was held that the use of an outside crane was proper to assist carmen in rerailling cars within yard limits where the regular wrecking derrick was located 110 miles away.

From the foregoing it is clear that there was absolutely no violation of any rule or agreement in this case. However, if this Board finds a rule which prohibits the carrier from using its own equipment when needed in wrecking operations, then it must be determined whether the claimants have suffered any loss of earnings as claimed. As pointed out in the carrier's statement of facts, the rerailling of the cars in question would have taken somewhat longer if the B&B crane had not been utilized. Under such circumstances the wrecking crew and the train crew would have been tied up before completion of wrecking operations at the scene of the derailment without being under pay. However, with the use of the B&B crane, the wreck was quickly picked up and the crew started on its way home. Since the wrecking crew cannot be tied up for rest away from home station after wrecking operations have been completed without remaining under pay, the claimants obtained an 8-hour rest period with pay while the train crew was being rested. This enabled the wrecking crew to be under pay for 48½ hours at the time-and-one-half rate while performing only 3½ hours actual work. Under such circumstances there was absolutely no loss of earnings whatsoever.

**THE CLAIM OF THE ORGANIZATION, THEREFORE,  
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. There is nothing in Rule 88 or in any other rule or agreement which prohibits or limits the carrier's right to utilize any necessary equipment in performing wrecking operations.
2. There were no carmen qualified to operate the B&B department rail crane which the management determined was necessary for the safe and efficient rerailling of the four cars at Navajo, Montana. Rule 88 contemplates that men of any class may be utilized to perform duties at wrecks when needed.
3. Previous awards of this Board recognize that wrecking service is not within the exclusive jurisdiction of carmen.
4. The claimants have failed to carry their burden of proof that they have suffered any loss of earnings as claimed.

For the foregoing reasons, the carrier respectfully requests that the claims of the employees 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.

A 4-car derailment having occurred at Navajo, Montana, the wrecking crew at Minot, North Dakota, was called out for the re-railment work and directed to take with them a small 60-ton-capacity crane or wrecking derrick. Carrier also had available at Minot a large 250-ton-capacity wrecking derrick which it was thought by Carrier not wise to transport to and use at the derailment, which was located some 238 miles west of Minot. However, it was decided that it would be desirable to use two cranes to raise and rerail the cars and as the only other suitable wrecking cranes were many miles distant from the derailment—at Havre 351 miles west and at Grand Forks 445 miles east—Carrier also planned to pick up on the way to the work a 40-ton diesel locomotive crane being used by the bridge and building department at Bainville, Montana, some 80 miles from Navajo. And, because there was no employe in the car department at Minot qualified to operate this 40-ton rail crane, the regularly assigned bridge and building department operator was to be used in the work to be accomplished.

The Minot wrecking crew, composed of the six members named in above claim, was called at 6:30 P.M. November 10, 1959. It arrived at the location of the derailment at 1 P.M. the next day, November 11. The wrecking operation was completed by 4:30 P.M. the same day, at which time the work train and the wrecking crew began the return to headquarters. However, at Plentywood, which is some 25 miles from Navajo, the train crew which was operating the work train had to be tied up to avoid violation of the hours of service law. So, while the train crew rested for 8 hours, the wrecking crew was also allowed to rest, but, because their work had already been finished, the wrecking crew continued under full pay at the time-and-one-half rate pursuant to wrecking pay rules. The train crew having rested, the work train continued on its way and arrived at headquarters in Minot at 7 P.M. on November 12, 1959. As a consequence, the wrecking crew had been under pay at the time-and-one-half rate from 6:30 P.M. November 10 until 7 P.M. November 12, a total of 48½ hours, although actually working only a total of 3½ hours.

However, it is contended that the wrecking work performed at Navajo, Montana, by the B&B department crane operator and derrick was a violation of the Agreement, especially Rule 88, captioned "Wrecking Crews", and that the carrier should additionally compensate the six members of the Minot wrecking crew with four hours pay at the time and one-half rate because of said rule violation.

The pertinent portions of Rule 88 read as follows:

"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 17 and 22.

"When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. \* \* \*

"\* \* \*

"When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classifications."

But an examination of the record in this case before us discloses that in order to take care of the derailment under consideration the regularly assigned Minot wrecking crew did "accompany the outfit"; however, that due to there being no carman employe available in the car department qualified to operate the 40-ton rail crane to be picked up at Bainville, the regularly assigned operator of said crane from the B&B department was "needed" as an additional member of the wrecking crew and was taken along to perform duties consistent with his classification—this, as provided in the last paragraph of Rule 88.

Yet Claimants aver that this would not have been necessary had the large 250-ton-capacity wrecking derrick and operator been taken along from Minot; or again if more time than the 3½ hours actually spent had been devoted to the work of rerailing the cars in question using only the small 60-ton-capacity wrecking derrick from Minot, something which it is claimed was entirely possible. However, the decision as to the methods and machinery and equipment to be used for the rerailing work to be accomplished at the distant location in question was the responsibility of management. As was observed in Second Division Award 3270:

"\* \* \* The carrier's exercise of a sound business judgment with respect to the most economical and efficient conduct of its operations should not be interfered with in the absence of clear and convincing evidence that its claimed business reasons are without reasonable support."

and again in Award 3630:

"It is a fundamental principle of the employer-employee relation that the determination of the manner of conducting the business is vested in the employer except as its power of decision has been surrendered by agreement or is limited by law. Contractual surrender in whole or in part of such basic attribute of the managerial function should appear in clear and unmistakable language."

We have examined and analyzed the authorities cited by claimants wherein the fact situations were much different than that we have here considered and we do not find in them support for the position taken by claimants in the instant case.

We are of the opinion that the claim before us cannot be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September, 1963.