

Award No. 4563

Docket No. 4276

2-GN-CM-'64

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 under the current agreement other than Carmen were improperly used to augment the regular assigned wrecking crew force at Willow Lake, South Dakota on October 4, 1960.

2. That accordingly the Carrier be ordered to compensate Carman William Tutko Jr., Earl Wuollet, Paul Wuollet, Marcellus Burns, John Cardinal and Rudolph Olson at the applicable rates of pay for an additional four (4) hours at the rate of time and one-half because of said violation.

EMPLOYEES' STATEMENT OF FACTS: On October 4, 1960 the Minneapolis wrecking crew, consisting of the above named carmen, and hereinafter referred to as the claimants, were called and sent to a derailment at Willow Lake, South Dakota, consisting of six cars.

The derailment took place on Saturday, October 1, 1960 at 6:15 A.M. but since the siding was not blocked it was decided to allow the derailed cars to stand until a more convenient time, therefore no emergency was involved in the instant case.

The members of the regularly assigned wrecking crew were compensated for wrecking service for the entire time spent by them in performing work in connection with this derailment.

This dispute was handled with all carrier officials designated to handle disputes, all of whom declined to adjust it.

The agreement effective September, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that there is nothing in Rule 88 of the current agreement, captioned "Wrecking Crews" and reading:

3. Even if the organization proves that the cars were rerailed by the maintenance of way crane, it must also point out clear and specific language in the agreement which reserves such work for the exclusive jurisdiction of carmen.

4. There is nothing in Rules 42(a), 83 or 88 which grants to carmen the exclusive right to perform all rerailing or wrecking work on this property; nor is there anything in those rules which prohibits the carrier from utilizing maintenance of way forces and equipment to perform the work in question.

5. Previous awards of this board have recognized that many items of work, including rerailing of freight cars, may ordinarily be performed by carmen, but do not fall within the exclusive jurisdiction of that craft.

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 employees 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.

Claimants are regularly assigned members of Carrier's Minneapolis wrecking crew, who were called for wrecking service at Willow Lake, South Dakota on October 4, 1960.

They contend that others than Carmen were improperly used to augment the regularly assigned wrecking crew at the scene of this derailment.

In support of their contention, Claimants have submitted photographs which purport to show Maintenance of Way personnel and an off-track crane performing wrecking service.

Rule 88 of the controlling agreement reads in pertinent parts as follows:

"Wrecking crews, including derrick operators and firemen, will be composed of carmen * * *.

* * * * *

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

Rule 42 (a) of the controlling agreement reads in part as follows:

"None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft, * * *."

It is not disputed that the work of rehabilitating the track and road bed at the scene of a wreck is work properly performed by the Maintenance of Way forces.

Carrier contends that this record discloses that Maintenance of Way forces were merely clearing the right of way so that they could make track repairs, and further insists that these forces did no rerailing.

If wrecking service consisted merely of the rerailing of cars, we would have no difficulty sustaining Carrier's position.

"Wrecking service" is not defined in the controlling agreement, but past practice and prior Awards of this Division lend some evidence of what is and what is not included in the term. It involves repairs to damaged equipment, lifting, dragging and rolling of equipment, as well as the rerailing of the equipment in all of which the special skills and equipment of the Carmen's craft are required.

The handling of the equipment at the scene of the instant derailment, as depicted by the photographs submitted is work generally recognized as the work of Carmen under the special rules applicable and past practice, as well as prior Awards of this Division. (See for example, our Awards 878, 1090, 1123, 1127, 1298.) (See also Award 1322, which was a denial Award, but reviewed the history and practice of this subject.)

AWARD

Claim 1: Sustained.

Claim 2: Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1964.