Award No. 4564
Docket No. 4280
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 EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement when Carmen W. Tutko, Jr., Paul Wuollet, Earl Wuollet, Marcellus Burns, John Cardinal and Rudolph Olson were not called to accompany the wrecking outfit when it left Minneapolis, Minn., on October 2, 1960.

2. That accordingly the Carrier be ordered to compensate the aforesaid employes as follows;

William Tutko, Jr.	October	3rd		16	hours	at	time	and	one-half
Paul Wuollet	October	2nd	& 3rd	31½	"	"	"	"	"
Earl Wuollet	"	"	"	31½	"	"	"	"	"
Marcellus Burns	"	"	"	31½	"	"	"	"	"
John Cardinal	"	"	"	31½	"	"	"	"	"
Rudolph Olson	"	"	"	31½	"	"	"	"	"
Earl Wuollet	"	5th	& 6th	20½	"	"	"	"	"
Paul Wuollet	"	"	"	20½	"	"	"	"	"
John Cardinal	"	"	"	20½	"	"	"	"	"
Rudolph Olson	"	"	"	20½	"	"	"	"	"

EMPLOYES' STATEMENT OF FACTS: The Great Northern Ry. Co., hereinafter referred to as the carrier, maintains at Minneapolis a wrecking outfit and regularly assigned wrecking crew composed of carmen of which Carmen W. Tutko, Jr., Paul Wuollet, Earl Wuollet, Marcellus Burns, John Cardinal and Rudolph Olson, hereinafter referred to as the claimants, are regularly assigned members thereof.

When not engaged in wrecking service claimants regular tour of duty is on the repair track — Monday thru Friday — 7:30 A. M. to 3:30 P. M.

On Saturday October 1, 1960 six cars were derailed of train No. 531 at Willow Lake, South Dakota.

additional members of wrecking crews. If such employes are members of the crew and the crew must escort the derrick, as the organization contends, then it is strange that the word "accompany" is not used also in the last paragraph of Rule 88 instead of the word "taken." If the organization's argument is correct and is pursued to its logical conclusion, then failure to use the word "accompany" in the last paragraph of Rule 88 means that the regularly assigned members of the crew must escort the derrick, but additional employes taken to derailments need not. Such a result would obviously be absurd and could not have been intended, yet the last paragraph of Rule 88 clearly does **not** provide that supplementary wrecking crew employes must "accompany" the outfit.

The organization's argument would also be impossible in actual application at Minneapolis and at other points where two derricks are maintained with one regularly assigned crew. If a serious derailment had occurred while the claimants were at Willow Lake which would have required use of the large derrick, the large derrick would have been dispatched to the scene while the claimants were being transported directly to that point by automobile. Under the organization's theory, everything would have to stand still while the claimants were brought back to Minneapolis escorting the small derrick, so that they could escort the large derrick from Minneapolis to the new derailment. A similarly absurd situation would have occurred if the small derrick had broken down before the work was finished at Willow Lake. Under the organization's theory, the claimants would have had to come to Minneapolis to escort the large derrick to Willow Lake. Obviously, no such absurd results were intended by the language of Rule 88.

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

1. It is the fundamental right of the carrier to transport its wrecking crews to the scene of a derailment in any manner it determines is necessary and proper, unless it has restricted that right by some clear and unambiguous contractual language.

2. The only contractual language cited by the organization to carry its burden of proof in this case, are the words "accompany the outfit" in Rule 88.

3. The organization's theory of Rule 88 would produce absurd results in actual practice.

4. The history of Rule 88 and the other language in that rule clearly indicates that the word "accompany" was not intended to require the regularly assigned crew to "escort" the derrick.

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.

Claimants are the members of the regularly assigned wrecking crew which is maintained at Minneapolis, Minnesota by the Carrier.

On October 2, 1960, at 4 P.M., the wrecking outfit, without the Claimants, departed Minneapolis for Willow Lake, South Dakota to attend to a derailment at that point.

Claimants were dispatched to Willow Lake by private automobile at 4 A. M., October 4, 1960, and they proceeded to work the wreck.

Rule 88 of the current agreement reads in part as follows:

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

It is the position of the Claimants that they were entitled to accompany the wrecker when it departed Minneapolis for Willow Lake, and they are seeking compensation for the time involved under Rule 22(c) of the current agreement.

Carrier contends that it may transport the wrecking crew in any manner it deems proper, and that the controlling agreement gives the crew no right to physically accompany the wrecker.

We have considered numerous disputes concerning this same question, and having reviewed our prior Awards we adhere to our former conclusions that under the instant Rule, as well as similar Rules, the regularly assigned wrecking crew is entitled to physically accompany the outfit when it is called for wrecks or derailments outside of yard limits.

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.