Award No. 4571

Docket No. 4325

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 erred when they sent other than the regularly assigned wrecking crew and derrick to load salvage parts and freight car trucks at a derailment on December 20, 1960.

2. That accordingly, the Carrier be ordered to compensate Carmen W. B. Galloway, E. H. Bucholz, R. W. Malcomb, D. Yerkovich and C. F. Mitchell, regularly assigned members of the Klamath Falls wrecking crew, in the amount of nine (9) hours each, at the rate of time and one-half, for December 20, 1960, account of said violation.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Ry. Co., hereinafter referred to as the carrier, maintains at Klamath Falls, Oregon a wrecking outfit and regularly assigned wrecking crew composed of carmen of which Carmen W. B. Galloway, E. H. Bucholz, R. W Malcomb, D. Yerkovich and C. F. Mitchell, 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 4:00 P. M. On December 3, 1960 a derailment of twenty-five (25) cars occurred at mile post 34, between Lapine and Beal, Oregon. The Klamath Falls wrecking outfit and crew were dispatched to the scene of the derailment, working thereat until they were returned to home station on December 5, 1960.

Of these twenty-five cars, two of them were rerailed by the Klamath Falls wrecking crew; the remaining twenty-three cars, GN 21192, WFE 68739, WFE 66179, WFE 72400, UP 56986, SFRD 13600, SFRD 10531, SP 506414, SP 214371, SP 210721, RBWX 64179, RBWX 64216, NP 27017, NP 5485, MDT 18123,

that a wrecking outfit and crew was necessary for the work in question, and such work did constitute wrecking service as the organization contends, only time and one-half instead of straight time would have been paid to the claimants.

Therefore, they are not entitled to the penalties demanded even if this board should find some violation of the Agreement in this case.

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

1. The organization has failed to carry its burden of proving that the carrier has restricted its fundamental right to assign work by granting to wrecking crews the exclusive right to perform the work in question in either Rule 42(a) or Rule 88.

2. Wrecking service, as that term is used in Schedule Rule 88 and in the railroad industry generally, does not include the picking up of scrap and salvage from the right of way which is not a necessary part of the work involved in clearing the roadbed after a derailment in order to place the track back in service.

3. The carrier's definition of "wrecking service" is supported by past practice on the property, federal court interpretation of the hours of service act, and the decisions of this Board.

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 regularly assigned members of the Carrier's wrecking crew at Klamath Falls, Oregon.

On December 3, 1960, a derailment of 25 cars occurred between Lapine and Beal, Oregon. The Klamath Falls wrecker and crew were dispatched to the scene, and were returned to home station on December 5, 1960. Only two of the cars were rerailed. The others being badly burned, were dragged away from the roadbed and the right of way was reopened.

On December 20, 1960, the Carrier dispatched three Carmen, three Maintenance of Way personnel and a Caterpillar tractor and a B&B crane to the scene, for the purpose of cleaning up the wreckage and the handling of salvageable parts. These forces loaded the salvageable parts into four gondola cars. The freight car bodies were sold to a scrap dealer. The gondola cars were sent to Hillyard, Washington, and the various parts were disposed of as salvage or scrap as determined by the Stores Department.

It is the position of Claimants that the work involved in salvaging the various parts was wrecking service within the meaning of Rule 88 of the controlling agreement. No claim is made for the cleaning up of the scrap car bodies which were junked.

Carrier contends that the wrecking crew performed all of the wrecking service to which they were entitled on the dates of December 3 through December 5, and that the work performed on December 20 was merely the picking up of scrap and salvage which is not wrecking service within the meaning of the Rule contended for by the Claimants.

Carrier objects to our consideration of the instances of prior similar disputes on this property evidenced by Exhibits "C", "C-1", "D", "D-1" and "D-2", attached to the Employes' rebuttal statement.

We uphold the Carrier's objection, and shall disregard these exhibits in our disposition of this dispute. While past practice in many instances is an aid to us in determining the effect of an agreement, the citation of the resolution of similar disputes cannot be given the same effect. The circumstances which attended the dispute and its resolution are not available to us, and the motives which led to the resolution of such dispute are unknown to us. We cannot consider such instances as determinative of anything other than the fact that they were settled on the property.

Returning to the merits of the instant dispute, the mere fact that the disputed work was performed some two weeks after the initial wrecking service does not of itself take it out of the classification of wrecking service. If it was the work of picking up scrap and debris in the maintenance of the right of way following the wreck, then we would deny the claim.

But something more was involved here. The work performed on December 20 involved a judgment concerning parts which might or might not be salvageable, and the handling of those parts in accordance with that judgment by mechanics skilled in the carmen's craft. It is true that three carmen were on the scene, but that did not make it any less wrecking service than it was on the date that the wreck occurred. The wrecking crew was entitled to be called back to complete the wrecking service, and in calling other men and equipment to perform the work here involved, the Carrier violated the controlling agreement.

AWARD

Claim 1: Sustained.

Claim 2: Sustained, except that the compensation shall be in accordance with Rule 22(c), less what the Claimants may have been paid for their regular tour of duty on December 20, 1960.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry Passaman
Executive Secretary

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