

Award No. 4675
Docket No. 4385
2-CMS_tP&P-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: 1. That the current agreement was violated when a sufficient number of the regularly assigned wrecking crew at St. Paul, Minnesota was not called to accompany the outfit with its operator when it was sent to perform wrecking service in connection with derailment at Miles City, Montana October 25 through October 30, 1961.

2. That accordingly, the Carrier be ordered to compensate the following members of the St. Paul wrecking crew:

J. M. Hentges
Walter Peterson
Calvin A. Wachs

Henry Vejtruba
W. M. Anfang

in the amount they would have earned had they been called to accompany the outfit and its operator to perform this wrecking service.

EMPLOYEES' STATEMENT OF FACTS: Carrier, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, maintains a wrecking outfit and a regularly assigned wrecking crew comprised of the above named claimants and wrecking derrick Operator Ernest Benson at St. Paul, Minnesota. On the morning of October 25, 1961, Passenger Train Extra #205 West was derailed at Miles City, Montana and the St. Paul, Minnesota wrecking outfit, with the regularly assigned operator, was dispatched to Miles City to clear up the wreck. The remainder of the regularly assigned crew was not called but instead, members of the crews assigned to the wrecking outfits stationed at Miles City, Montana and at Aberdeen, South Dakota, were substituted for the regularly assigned crew and were used in place of the claimants (regularly assigned crew). Upon completion of the work involved, the derrick with its operator was returned to St. Paul October 30, 1961.

This dispute has been handled with all carrier officers designated to handle such matters, all of whom have declined to adjust it.

never a determination made by the carrier that the St. Paul wrecking crew would be needed, hence that crew was not called and we submit there was no provision requiring the carrier to call the St. Paul wrecking crew under those circumstances. It was determined after the work at the scene of the derailment was started, that a heavier derrick would be required and all that is involved in this dispute, and nothing more, is the temporary substitution of the St. Paul derrick for smaller derricks which were first moved to the scene of the derailment.

It is the duty of the carrier to operate the railroad economically and efficiently and for us to have called the St. Paul wrecking crew when there were already two wrecking crews at the scene of the derailment or, in other words, to have called the St. Paul wrecking crew when there was absolutely no need for them, would have been a violation of our duty and obligation to conduct our operations in an efficient and economical manner.

The carrier submits that it is readily apparent that by the instant claim the employes are attempting to secure through the medium of a board award in the instant case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held by the second division, as well as by the other three divisions and the various special boards of adjustment, that your board is not empowered to write new rules or to write new provisions into existing rules.

It is the carrier's position that the instant claim is not properly before your board and for that reason is barred and must be dismissed and it is our further position that the instant claim is in no way supported by schedule rules or agreement and we respectfully request that the claim 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 waived right of appearance at hearing thereon.

On October 25, 1961, Passenger Extra Train No. 205 was derailed outside the yard limits at Miles City, Montana. One hundred ton wrecking derricks, along with their wrecking crews, were called from Miles City and Aberdeen.

When it was found that the 100 ton derricks could not do the required work, the Carrier, on October 25, 1961, ordered out the 250 ton wrecking derrick, engineer, and outfit cars from St. Paul, Minnesota, which is 713 miles from Miles City.

The St. Paul wrecking outfit and engineer arrived at the wreck on October 27, 1961, completed work on October 28, 1961 and arrived back in St. Paul on October 30, 1961.

At the hearing before the Referee, the Carrier representative stated that he would not argue Article V, Section 3, First (i) of the Railway Labor Act or Circular No. 1 of this Board. Therefore, the Carrier's charge that the claim be-

fore this Division was not presented to and handled with the Carrier on the property, shall not be considered.

The Organization contends that when the Carrier failed to have the regularly assigned wrecking crew accompany the St. Paul Wrecking Outfit, it violated Rules 10 and 88 of the controlling Labor Agreement.

The Carrier contends "that Rule 88(c) does not require wrecking crews to be called", because "the determination of when a wrecking crew would be needed and called was strictly a function of management". The Carrier also claims that there were two wrecking crews at the derailment scene, therefore, the Carrier decided not to call the St. Paul wrecking crew because it was not needed.

The pertinent portion of the principle rule involved is as follows:

"Rule 88—Wrecking Crews

(c) When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit."

In Second Division Award No. 857, which involves a factually related, situation and a rule identical with 88(c), supra, the Board held, in part, that "The language of the rule of agreement involved contemplates that when the wrecking outfit is used for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit".

In Second Division Award 3936, wherein the rule and facts closely resemble those in the case before us, the Board held, in part, that "Under Rule 108 the regular assigned crew should have accompanied the outfit".

Again in Second Division Award No. 4154 the Board held, in part, that "Under like or similar rules the regularly assigned crew must in point of time accompany the wrecking outfit (Awards 3190, 3651 and 3864) and this Board has no authority to change the rule".

The above Awards are sound and, therefore, they should be followed. Accordingly, we must sustain the Organization's claim. Regarding the compensation aspects of the claim, we rule that the regularly assigned wrecking crew members, i.e., the Claimants, shall be paid the difference between what they earned and what they would have earned had they accompanied the wrecking outfit.

AWARD

Claim 1 sustained.

Claim 2 sustained as stated in Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.