



Award No. 4770

Docket No. 4612

2-GN-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson 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 the Carrier on August 4, 1962, improperly assigned Maintenance of Way employes to clear the tracks of a derailment, and

2 — That accordingly, the Carrier be ordered to compensate Relief Wrecking Engineer Noble C. Melin and Carmen H. Stack, B. Dault and W. Bong in the amount of eight (8) hours, at the punitive rate, account of said violation.

EMPLOYEES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, maintains a fully equipped wrecking outfit and crew at the car shop facilities at Superior, Wisconsin. The above named carmen, Noble C. Melin, B. Dault, H. Stack and W. Bong, hereinafter referred to as the claimants, are regularly assigned as wrecking crew members of the Superior wrecking outfit and crew and are used to perform all rerailling and wrecking service.

The Allouez Ore Yards, which is the scene of this dispute is located within the yard limits of Superior Car Shops, where the claimants are regularly employed.

On Saturday, August 4, 1962, two loaded ore cars, GN 91526 and GN 88616 were derailed on the outgoing lead of the Allouez Ore Yards. The cars were not turned over, just derailed, due to a partially open hopper door.

Carrier's supervisory personnel called maintenance of way employes, on their rest days, and with the aid of a bulldozer, and other equipment, burned holes in the sides of the ore cars, fastened cables to the cars and with the aid of the bulldozer rolled the cars clear off the right-of-way.

On Monday, August 6, 1962 two carmen from Superior were sent to the Allouez Ore Yards where they loaded the two wrecked ore cars into gondolas.

at Allouez and could not have been damaged, even if the work in question had required the use of carmen mechanics under 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 utilize any method it decides is desirable in clearing derailed freight cars from the tracks unless the power to make such decisions has been limited by law or by some clear and unmistakable language in the collective bargaining agreement.

2. In order to carry its burden of proof in this case, the organization must prove that wrecking crews composed of carmen have secured by clear agreement and practice the exclusive right to pull freight cars from tracks, or has secured contractual limitations which prohibit the carrier from utilizing other than regular wrecking derrick equipment when needed at a derailment.

3. Previous awards of this board involving similar schedule rules on this and other properties recognize that even rerailling of freight cars is not within the exclusive jurisdiction of carmen.

4. The claimants are not entitled to damages even if Rule 88 did require the work in question to be performed by carmen.

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 waived right of appearance at hearing thereon.

On August 4, 1962, the outgoing lead of the Allouez Ore Yards was blocked by the derailment without overturning of two ore cars. The Allouez Ore Yards are within the Superior Yard limits, but have a separate seniority roster for carmen.

The cars were not then rerailed, but were pulled over sideways off the tracks by a maintenance of way foreman and two laborers by means of power equipment which the Employes call a bulldozer and the Carrier calls a road-grader. Two days later they were rerailed by carmen, apparently of Allouez seniority, with a maintenance of way or ore dock crane. This claim relates only to August 4th.

The Carrier's position is that this was not wrecking service because the cars were not then rerailed. But they were derailed, which called for wrecking service to clear the tracks.

The Claimants are Wrecking Engineer Melin and three other regularly assigned carmen at Superior, who are also assigned for wrecking service as required.

If the derailment had been outside yard limits the Superior wrecking crew should under Rule 88 have been called. But since it was within yard limits and the wrecker was not used, "sufficient carmen" with seniority at the point should have been called.

The work of clearing the derailed cars from the tracks was wrecking service, and the use of maintenance of way employes in lieu of carmen was improper. Claim 1 must therefore be sustained.

But the claimants were not entitled to be called, since carmen with Allouez seniority are entitled to carmen's work in their seniority district.

AWARD

Claim 1 sustained.

Claim 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1965.