

Award No. 4821
Docket No. 4591
2-GN-CM-'66

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 under the current agreement other than the regularly assigned wrecking crew were sent to perform wrecking service.
2. And that, accordingly, the Carrier be ordered to compensate Carmen Jule Barnes, J. P. Johnson and Ben Leason in the amount of 19½ hours each, at the time and one-half 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 at its car repair facilities in Sioux City, Iowa. Carmen Jule Barnes and J. P. Johnson, regularly assigned members of the wrecking crew, Carman Ben Leason, relief member of the wrecking crew, hereinafter referred to as the claimants, are regularly employed at Carrier's car department facilities in Sioux City, Iowa and were available at the time of this dispute.

On June 13, 1962, two carmen, from the overtime call list, were sent from Sioux City, Iowa to Sioux Falls, South Dakota to rerail engine #650 and freight car #33949. Time of departure was 2 P.M.

The two carmen worked until 10:30 P.M., 8½ hours, tied up for the night and resumed work at 5:30 A.M., June 14th, completing their assignment at 4:30 P.M., for a total of 19½ hours.

This dispute was subsequently handled with all officers of the carrier designated to handle such disputes including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that based upon the foregoing statement of facts and the following rules of the current agreement, reading in pertinent part:

they are contending that they should have been used with the truck.

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

1. When Rule 22(c) is read together with Rule 88, it is clear that the term "wrecking service employes" includes only the regularly assigned members of a wrecking crew and any additional employes taken along to work with a wrecking derrick outfit.

2. The organization acquiesced in the above definition of the term "wrecking service employes" shortly before negotiating the present language of Rule 22(c) to provide premium pay for such employes effective July 1, 1949.

3. The organization agreed to the above definition of "wrecking service employes" subsequent to July 1, 1949 in three claims essentially identical to those in the instant case, two of which were withdrawn in writing by the general chairman without reservation after they were rejected by the carrier's highest appeal officer.

4. The organization already has a wholly inconsistent claim pending before this board in **Docket No. 4394**.

For the foregoing reasons, the carrier respectfully requests that the claim 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.

The claim is that the Agreement was violated when carmen not members of the regularly assigned wrecking crew were sent by truck with frogs, jacks and blocking to perform rerailling service outside of yard limits without a derrick.

The pertinent portions of Rule 88 relied upon by Claimants are as follows:

"Rule 88. Wrecking Crews.

"Wrecking crews, including derrick operators and firemen, will be composed of carmen who will be regularly assigned by bulletin and will be paid as per Rules 17 and 22.

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

Since at least 1949 this Division has held that that under rules identical with or essentially similar to the above, rerailling work is not the exclusive duty of wrecking crews. See Awards Nos. 1322, 1482, 1757, 1763, 2049 and 2208. In Award No. 1482 this Division said in 1951:

"It is only when a wrecker is required that all wrecking work is assigned to carmen. If the wrecker is called to wrecks or derailments outside of yard

"limits, the regularly assigned crew will accompany it.*** Consequently when a derailment occurs outside of yard limits, as here, and the services of the wrecker are not required, the wrecking crew (carmen) do not have the exclusive right to perform the work."

That conclusion is particularly inescapable under provisions which, like Rule 88, require derrick operators and firemen to be regularly assigned as members of the wrecking crew, and provide that the entire crew must accompany the outfit when called for wrecks or derailments outside of yard limits. Obviously by "outfit" the parties meant the derrick; for otherwise it makes no sense to require that the derrick operator and fireman be sent in all cases; and it certainly cannot have been intended that even if no derrick was needed, all wrecks or derailments outside of yard limits must be handled by the crew especially set up to handle the derrick, including the derrick operator and fireman. This consideration also disposes of the argument that a truck sent in lieu of any unneeded derrick becomes "the outfit;" for if so it requires a derrick operator and a fireman.

The record shows without question that since at least 1947 it has been the practice on this property to use employes without regard to membership on wrecking crews to perform rerailling service outside of yard limits when no wrecker was needed. During about four years of that time there was a dispute whether men so used should be compensated under Rule 22(a) for emergency road service, or under Rule 22(c) for wrecking service. As held in Award No. 4596, rerailling is wrecking service and should be compensated as such under Rule 22(c); but it does not follow that when a derrick is not required the work must be done exclusively by crews established under Rule 88 to handle wrecks and derailments by derrick and requiring unneeded derrick operators and firemen.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.