Award No. 4825
Docket No. 4653
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

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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 Great Northern Railway Co. violated the current agreement when they hired a private crane and operator plus two other carmen to rerail a caboose at Willmar, Minnesota on Saturday, September 29, 1962.

2. That accordingly the Carrier be ordered to compensate Carmen Wm. Tutko, Paul Wuollet, Earl Wuollet, Marcellus Burns. Rudolph Olson, John Cardinal and Edward Hines, each, in the amount of eight (8) hours, at the rate of time and one-half for September 29, 1962, account of said violation.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, maintains a complete wrecking outfit on the Willmar Division located at Minneapolis, Minnesota.

Carmen Tutko, P. Wuollet, E. Wuollet, Burns, Olson, Cardinal and Hines, hereinafter referred to as the claimants, are members of the regularly assigned crew and were ready and available on the date of this dispute.

On the date of September 29, 1962, a caboose on a sidetrack was sideswiped in a switching operation, and derailed, causing $400 damage.

The derailment took place in the Willmar Yards, Willmar, Minnesota.

Prior to January 1959 the point of Willmar employed a regular crew of carmen and maintained a fully equipped wrecking outfit and crew.

In January 1959 carrier abolished all carmen's jobs at Willmar and moved the wrecking derrick to Minneapolis. All the carmen were furloughed at Willmar, but carrier set up two new points known as Benson and Litchfield where sufficient carmen were employed to handle emergency road work along the line.

On Saturday, September 24, 1962, when this derailment occurred, a private crane and operator from the Anderson Garage in Willmar, plus two carmen from

its fundamental right to make business decisions when it decided to utilize the rented truck crane to assist the two carmen in rerailing one car at Willmar; that it would have been absurd to have called the Minneapolis wrecking derrick and crew for such work; that there is nothing in Schedule Rule 88 which prohibited use of the truck crane or required use of the Minneapolis derrick; and that the action of the carrier was consistent with past practice on this carrier and in the industry as indicated by prior decisions of this board. . .

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 equipment it decides is desirable in rerailing freight cars, 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 it has secured by clear agreement and practice the exclusive right to operate equipment utilized in rerailing freight cars, and has secured contractual limitations which prohibit the carrier from utilizing other equipment when needed at a derailment.

3. Previous awards of this board recognize that rerailing freight cars is not within the exclusive jurisdiction of carmen, and that practice prevails on this property

4. There is nothing in Rule 88 or in any other rule or agreement which prohibits or limits the carrier's right to utilize any necessary equipment in performing rerailing operations.

5. There were no carmen in the Minneapolis wrecking crew who were qualified to operate the truck crane which the management determined was needed to assist the local carmen in the safe and efficient rerailmnt of the car at Willmar.

6. Previous awards of this board have denied similar claims under similar circumstances.

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.

Many awards of this Division have held under these and similar rules that regularly assigned wrecking crews are not only entitled to accompany their outfits when called, but under certain circumstances and subject to certain exceptions, are entitled to be called when other wrecking derricks, and sometimes when other similar equipment, is used instead of their own outfit.

The first such decision cited here, Award No. 1027, resulted from the wreck of a Lackawanna passenger train at Wayland, New York, 84 miles from Buffalo and 63 miles from Elmira. The 150-ton derrick at Buffalo, and both the Buffalo and Elmira wrecking crews were called; but the Elmira 100-ton derrick was unavailable because under repair. A New York Central 150-ton derrick and crew were available only 45 miles away, and were called in. A claim was made by the wrecking crew at Hampton, Pennsylvania, 178 miles away, where there was a 150-ton derrick. Without a referee this Division denied that claim twenty-one years ago, and subsequent denial awards Nos. 1065 and 1068 noted that the same issues were involved as in that case. Many subsequent decisions, both denial and sustaining awards, have followed the same principles.

In sustaining Award No. 1123 this Division said:

> "Under the rules of the controlling agreement wrecking work, with certain well recognized exceptions of which the present case is not one, belongs to carmen."

In denial Award No. 1124 this Division said:

> "as was said in Docket 1026, Award 1123, wrecking work, with certain well recognized exceptions, belongs to carmen and of course to carmen covered by the controlling agreement. This case comes within one of the exceptions to the rule. This was an emergency in which the carrier was justified in borrowing the wrecking outfit and crew from another railroad."

In Award No. 1327, the earliest award cited in support of the present claim, this Division said:

> "No emergency was involved * * *."

In this instance, 100 miles away from the Claimants' station, at the height of the apple shipping season, a derailment blocked the three outside tracks of the Willmar yard, including those used in the icing of cars. It was decided that local carmen could readily clear the derailment with the help of a truck crane rented with its operators from a local garage. Under the circumstances the Minneapolis derrick was neither necessary nor reasonably available and the Claimants were not entitled to be called.

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.

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