



Award No. 6054

Docket No. 5917

2-N&W-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Agreement was violated and members of the regularly assigned wrecking crew damaged, when the Norfolk and Western Railway Company called, formed and/or used an auxiliary wrecking crew and outfit, for the performance of wrecking service in the rerailling of NKP Car, at a derailment in Princeton Yards, Princeton, West Virginia, on January 2, 1968.

2. That accordingly, the Norfolk and Western Railway Company be ordered to compensate Derrick Engineer D. B. Lilly, Car Repairer G. B. Dehart and Helper Car Repairer W. G. Wolfe, regularly assigned members of the Elmore Wrecking Crew, in the amount of a call of two (2) hours and forty (40) minutes each, at the rate of time and one-half, for January 2, 1968, because of said violation and resultant damage to Claimants.

EMPLOYES' STATEMENT OF FACTS: The Norfolk and Western Railway Company, hereinafter referred to as the carrier, maintains at Elmore, West Virginia, a point on carrier's line, on the New River Division, (formerly VGN) a wrecking outfit and regularly assigned wrecking crew, of which Carmen D. B. Lilly, G. B. Dehart and Helper Car Repairer W. G. Wolfe, hereinafter referred to as claimants, were regularly assigned members, this being the one and only wrecking crew so assigned on said New River Division.

On December 22, 1967, N&W Train Extra Tast with Engine No. 1129, reporting at 6:15 P. M., after traveling approximately thirty-five (35) miles experienced a derailment in Princeton Yards, at Princeton, West Virginia, a point also on said New River Division approximately 35 miles from Elmore, to which derailment the Elmore Wrecking Crew and Outfit were dispatched and after rerailling one or more cars, on December 23, 1967, one (1) car, which claimant member of the wrecking crew recorded and described as NKP 80036,

claim to your Board have also abandoned their position that this car was retracted at this time and place, thus altering the claim and removing it from the jurisdiction of your board. It has further been shown that if the incident had occurred as alleged, claimants would have no right to perform work in another carman's seniority district. Also that claimants were not monetarily damaged; therefore are not entitled to pecuniary damages.

The carrier respectfully requests that the claim be dismissed or denied in its entirety.

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 employees 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.

By letter dated February 19, 1968, the Employees' Local Chairman instituted a Claim reading in part:

"This will serve as formal claim, for damages sustained by regularly assigned Elmore Wrecking Crew, on date of January 2, 1968, due to non-compliance with current Agreement, by Management, in the calling and/or formation and utilization of auxiliary wrecking crew and outfit, for the performance of wrecking service at Princeton, West Va., a point on the N&W Railway, (formerly VGN) approximately 35 miles from the home terminal of said regularly wrecking outfit, in the rerailment of NKP Car No. 80036, with all duties performed by said auxiliary crew, thus depriving the one and only wrecking crew, assigned to New River Division, and having serviced such Division and territory, for many, many, years, of work to which they were contractually entitled."

The Carrier contends that the Claim was amended upon appeal to the Board since no specific car number was given.

From a careful review of the record we find that at all times, during the handling on the property, the Employees contended that car NKP-80036 was involved.

The Vice President-Personnel denied the Claim by letter dated February 21, 1969, as follows:

"We have no record of a car bearing the identification and number NKP 80036 being derailed in Princeton or elsewhere on or near January 2, 1968. Under the circumstances it must be assumed that you have been misinformed in this instance.

Your attention is called to the many awards by all divisions of the National Railroad Adjustment Board, wherein it has been definitely,

positively, established that the burden of establishing facts sufficiently that require or permit the allowance of a claim is upon him who makes the claim."

We do not believe that the failure to name a specific car upon appeal would be a fatal amendment of the Claim.

We must, however, find that the employees have failed to meet their burden of proof. We find no probative evidence to support the Claim. This Board has held on many occasion that the burden of proving the claim is on the claimant.

We will dismiss the Claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1970.