

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Burlington-Northern, Incorporated, violated Rules 7, 82, 83 and 86 of the controlling agreement in effect on the Burlington-Northern, Incorporated, when they sent other than the regularly assigned Klamath Falls wrecking crew and wrecking derrick to complete a derailment on September 27, 1973.
2. That accordingly the Burlington-Northern, Incorporated, be ordered to additionally compensate Klamath Falls Carmen W. Galloway, J. Fry, H. Storbeck, G. Hergeshemer and R. Malcomb in the amount of ten (10) hours at the time and one-half ($1\frac{1}{2}$) rate for September 27, 1973.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

A freight train of the Carrier derailed at Merrill, Oregon on September 16, 1973, demolishing several cars. The Klamath Falls wrecking crew was sent to the derailment and worked at the site until September 20, 1973. Thereafter, on September 27, 1973, the Carrier sent sectionmen represented by BMW with a small lift crane where they loaded scrap from demolished cars, which scrap had been sold to the highest bidder, and they also loaded the wheels from demolished cars into a gondola car for dispatch to Vancouver, Washington.

First of all we find that the loading of scrap and debris following a wreck is not the exclusive work of a wrecking crew. See Award 4571.

The Organization contends that the Carrier recruited a wrecking crew composed of BMW sectionmen in violation of Agreement Rules 7, 82, 83 and 86. The Organization does not contend that the clear language of the Agreement specifically gives the wrecking crew exclusive rights to the loading of wheels from demolished cars into a gondola car. However, the Organization contends that Awards 4571 and 4572 of this Division, which involve the very same provisions of rules adopted on this property, supports the contention that such work is exclusively a wrecking crew's (carmen's) work.

Award 4571 states:

"But something more was involved here. The work performed on December 20 involved a judgment concerning parts which might or might not be salvageable, and the handling of those parts in accordance with that judgment by mechanics skilled in the carmen's craft."

It is fundamental that the Organization has the burden of proving all the elements of its case to this Board. In the instant case, the Petitioning Organization has not demonstrated to this Board that the loading of the wheels from the demolished freight cars involved judgement by BMW sectionmen (in lieu of carmen) on September 27, 1973, concerning which wheels might or might not be salvageable. The evidence of record demonstrates that no judgement was made: all of the wheels were loaded into the gondola car.

In Award No. 4572 the Claimants performed the work of cutting and burning salvageable parts from cars at the scene of a derailment. The Award related back to Award 4571, incorporating the concept of the requirement of the exercise of judgement concerning the salvageability of parts by those skilled in the Carmen's craft at the scene of a derailment; and, ultimately finding those individuals therefore should be paid the wrecking service rate.

In the Carrier's Submission page 10, the Carrier identified that local supervisors at the derailment scene made the judgement as to what equipment was salvageable and what was scrap. In page 2 of its Submission, the Carrier identified that in addition to its local supervisors, carmen also made these determinations, while serving from September 16 through September 20 as the regularly assigned wrecking crew. The Organization in its Rebuttal, p. 12, contends that the local supervisors did not act in accordance with the Contract by making judgements on the salvageability of parts. The Organization referred to "inspecting" as specifically spelled out as Carmen's work in Rule 83 of the Agreement. This theory of the instant case was never handled on the property, and is not properly before us. Resultingly, we are prohibited from ruling on this contention.

Since the Organization has not demonstrated that the work of loading wheels in the instant case is within the holding of Awards 4571 and 4572, we are required to deny this claim.

Form 1
Page 3

Award No. 7084
Docket No. 6869-T
2-BNI-CM-'76

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July, 1976.