

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12549
Docket No. 12298
93-2-91-2-133

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU
(
(Duluth, Missabe and Iron Range Railway
(Company

STATEMENT OF CLAIM:

- "1. That the Duluth, Missabe and Iron Range Railroad Company violated the terms of our current Agreement, in particular Rule 65(b).
2. That, accordingly, the Duluth, Missabe & Iron Range Railroad Company be ordered to compensate Carmen and Assistant Wrecking Foremen D. Wayt, W. Erickson, C. Carlson and V. Ophus in the amount of sixteen (16) hours each at the time and one-half rate; and in addition eight (8) hours each at the double time rate of pay for the dates of November 5 and 6, 1989. Further, that the Carrier be ordered to compensate Carmen and Wrecking Crew extra list Carmen B. Chesney, D. Stoneburner, P. Larson and E. Woods in the amount of sixteen (16) hours each at the time and one-half rate; also eight (8) hours at the double time rate of pay for the dates November 5 and 6, 1989. We further claim that the Carrier be ordered to compensate Carmen and Wrecking crew extra list Carmen G. Brieman and L. Korpela in the amount of ten (10) hours each at the time and one-half rate of pay account of the Duluth, Missabe & Iron Range Railroad Company failing to call these DM&IR Wrecking Crew Carmen for a derailment at Taconite Junction Switch #74, Minnesota on the dates of November 5 and 6, 1989."

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.

A claim was filed by the Local Chairman of the Organization on December 28, 1989, on grounds that the Carrier had violated the Agreement, and a May 11, 1988 letter when it permitted Burlington Northern Carmen to rerail two BN locomotives and two freight cars which had derailed on November 5, 1989. The derailment of BN Train No. 897 occurred at Taconite Junction on DM&IR property.

The pertinent provisions of the Agreement cited by the Organization are the following:

"Rule 65(b)

When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regular assigned crew will be called. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

The joint letter, dated May 11, 1988, which is signed by the General Chairman and the Carrier's Director of Personnel and Labor Relations, which is cited in the claim, states the following, in pertinent part:

"I will agree that in the future, foreign railroad employees will not be permitted to repair cars that have been rejected in interchange, on DM&IR property. I will also agree that when a foreign railroad furnishes a crane and operator to aid in clearing derailments of DM&IR trains, any foreign railroad employees who accompany the crane will do no work other than operate and service said crane."

According to the claim, BN Carmen spent some 350 manhours rerailling the equipment. According to the Carrier, it only took some 80 hours to rerail the equipment.

The Carrier argues that there was no Rule violated. The Carrier admits that while the DM&IR has a Joint Operating Agreement with the Burlington Northern Railroad which allows the BN to operate over the tracks in the Taconite area, the March 1, 1922 Agreement is silent as to how or by whom any wrecking services are

to be performed in this joint operating area. In the absence of Agreement language, according to the Carrier, it is the responsibility of the railroad operating at the time of a derailment to reraill any of its own engines or cars. The Carrier's argument here is consistent with arbitral precedent which states that "...the operator responsible for the work is the one to carry it through to completion." (See Second Division Awards 4169, 7833, and 11044; also First Division Awards 5777, 15404 and 18612 inter alia).

With respect to the specific Rule of Agreement cited by the Organization, the Board must conclude that Rule 65(b) does not support the claim. That Rule deals with the eventuality of when wrecking crews are called. It does not mandate that they should be called in instances of the type here at bar when the derailment of foreign equipment takes place, even if it is on Carrier's trackage. Likewise, the May 11, 1988 letter clearly deals with the "...derailments of DM&IR trains..." as the language of that letter states. There was no derailment of a DM&IR train on November 5, 1989, at Taconite Junction. The two locomotives and two freight cars which were derailed belonged to BN Train No. 897.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 28th day of July 1993.