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

the point of Litchfield were called to perform the work in rerailing this caboose.

This dispute has been handled with all carrier officers authorized to handle grievances, including the highest designated official, all of whom have declined to make satisfactory adjustment.

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

POSITION OF EMPLOYES: It is respectfully submitted that the carrier violated the applicable rules of the agreement, specifically Rule 88, captioned "WRECKING CREWS," reading in pertinent part:

> "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 177 & 22.
>
> When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within the yard limits, sufficient carmen will be called to perform the work.
>
> Meals and lodging will be provided by the Company while crews are on duty in wrecking service.
>
> When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification."

and Rule 42(a) captioned "Assignment of Work" and reading in pertinent part:

> "None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft, . ."

when, on Saturday, September 29. 1962, road repairmen, machinery and manpower from a private concern were recruited to perform wrecking sevice in lieu of the carrier's utilizing its own wrecking machinery and experienced manpower, which is in violation of the spirit and letter of the above provisions of Rule 88, thereby damaging the claimants in the amount they were entitled to earn under the provisions of Rule 17 and 22, specifically as set forth in Rule 22(c) reading:

> "Wrecking service employes will be paid at the rate of time and one-half for all time working, waiting or traveling from the time called to leave home station until their return thereto, except when relieved for rest periods. Rest periods shall be for not less than five (5) hours nor more than eight (8) hours, and shall not be given before going to work nor after all work is completed."

That the work contained in this dispute is wrecking service has not been denied by the carrier and cannot be denied. That a crane was needed to rerail this equipment is substantiated by the fact that the carrier recruited a private crane from an outside concern to assist the two carmen in rerailing the caboose. That this work, then, rightfully belongs to the wrecking crew is recognized even in Award No. 1757 where the majority of the board makes these statements:

> "It is only when a wrecker is required that all wrecking or derailment work is assigned to carmen . . . .
>
> (c) If a derrick, crane or other wrecking equipment operated by employes of another craft is used in lieu of an available wrecker and crew, a

violation of the agreement ordinarily exists." (Emphasis added)

Recent awards of the Second Division supporting the employes' position in this dispute, of which we quote in pertinent part are:

Award No. 3629:

The carrier relies on its decision that all of the wrecking crew was not required and that the wrecking derrick was not needed. This determination is controveted by the fact that it was necessary to use a privately owned bulldozer and operator to upright the tank car. **The undisputed facts of record, therefore, indicate that a wrecking derrick was needed to aid in rerailing the tank car. . .**

The carrier's primary decision that there is no need for a wrecking outfit is not absolute or binding, and in appropriate circumstances such as are disclosed in this docket, its decision will not be sustained.

On the basis of the facts here presented, therefore, we find that a wrecking derrick was needed and should have been called to perform the necessary work of rerailing the tank car and if the wrecking derrick had been called these claimants should have accompanied it." (Emphasis added)

Award No. 4266:

"It is not disputed that the rerailing was wrecking service.

Carrier maintains that the rerailing of cars and other equipment has never been assigned exclusively to carmen in the railroad industry, and that Rule 88 does not prohibit it "from using the equipment it feels is needed in clearing up a wreck or derailment.

We have no quarrel with the Carrier's second proposition as long as the work is assigned to the craft entitled to it under the particular controlling agreement. For instance, the Burro Crane and operator here involved undoubtedly had a proper function at the scene of this derailment.

When a wrecking crew is called, we hold that the re-railing of cars and other equipment is Carmen's work.

Carmen were entitled to the work which was here performed by the Burro Crane and operator. We do not hold that these particular claimants were entitled to be called from Fargo, but we do hold that the Carrier was in violation of the controlling agreement when it assigned the Crane and operator to Carmen's work." (Emphasis added)

Carrier has paid claims similar to the instant dispute when a crane, other than the wrecking derrick, was used to perform wrecking service. You will note a letter from the asst. to the president-personnel to the general chairman that he makes this statement:

", we agreed that this claim had merit. . . . ."

That the carrier has used the Minneapolis Wrecking Outfit and Crew for derailments, at Willmar, is substantiated by a letter from the division superintendent to the general chairman, concerning another dispute on the property, and from which we quote in pertinent part:

"In view of the fact that the Derrick was called and the crane referred to was used to assist, ..." (Emphasis added)

and the fact that this occurred in Wilmar Yards, the place where the instant dispute took place is substantiated in the first paragraph of the division superintendent's letter when he states:

> ", covering 8 hours at the rate of time and one-half for January 24, 1963 **in connection with rerailing cars at a derailment at Willmar Yard on January 24, 1963."** (Emphasis added)

In view of the undisputable facts of record, which clearly and fully supports the position of the employes, your board is respectfully requested to sustain the statement of claim in whole.

CARRIER'S STATEMENT OF FACTS: The claimants are all members of the wrecking crew stationed at Minneapolis, Minnesota.

On Saturday, September 29, 1962 at approximately 11 a.m., a caboose was derailed during switching operations in the Carrier's yards at Willmar, Minnesota, a point 100 miles west of Minneaplis. When a switch engine pulled a car from the west end of the track on which the caboose was standing it caused other cars to run eastward, eventually shoving the caboose through the switch at the east end of its track into the side of a refrigerator car which was part of an eastbound freight train standing on the yard lead track.

The derailed caboose and the car which it had sideswiped tied up the three outside tracks of the Willmar yard, including the tracks ordinarily used by eastbound freight trains to place refrigerator cars on the tracks of the Western Fruit Express ice house for icing. The tying up of the tracks in question created an emergency because it blocked the normal operation of the yard and made it difficult and time consuming to switch cars to and from the ice house tracks. The ice house tracks were more than usually busy at this particular time of the year, when the heaviest eastbound movement of Washington state apples was in progress.

Since the carrier no longer maintains a wrecking derrick at Willmar, the emergency situation presented the choice of waiting several hours for the Minneapolis wrecking crew and a work train to be mobilized and brought the 100 miles to Willmar or obtaining the use of locally available equipment. It was decided that there was neither time nor need to call for the services of the Minneapolis wrecking derrick and crew because the situation did not require the elaborate heavy duty equipment or the seven man crew. Instead, it was decided that two of the carrier's carmen from the near-by point of Litchfield, who were working in Willmar yard when the derailment occurred, and a truck crane available at a local independent garage could do the job quickly and efficiently Since there were no employes of the carrier capable of operating such a crane, the garage's two operators were also used, with one operating the crane and the other maneuvering the truck. The men and crane were assembled at the scene of the derailment by 12:30 p.m. and rerailed the caboose by 3:30 p.m, long before the Minneapolis wrecking crew and work train would have arrived at Willmar. The total bill for use of the truck crane and operators was $45.00. Use of the Minneapolis wrecking crew and a work train would have cost several hundred dollars.

Utilization of the truck crane from the local independent garage was obviously the most simple, expedient and efficient manner of assisting the two carmen with rerailing the caboose.

Background of the Case

On November 26, 1962 the organization's local chairman submitted claims

to the car foreman at Minneapolis in the amount of eight hours' additional unearned compensation for each of the seven claimants, contending that the carrier should have utilized its Minneapolis wrecking derrick to perform the simple rerailing task involved. The claims were declined by the car foreman on November 27, 1962.

The claim was appealed to the master mechanic, division superintendent and general manager on the same basis and declined in each instance.

On March 29, 1963 the general chairman appealed the claims to the vice president-personnel, the highest appeal officer, alleging violation of Schedule Rules 42(a) and 88. On May 22, 1963 the vice president declined the claims on grounds that the wrecking crew had not been called and had no exclusive right to the work.

After the case had been discussed in conference on several occasions the general chairman wrote a letter on December 4, 1963 threatening to appeal the dispute to this board and to support his case with citation of claim settlements made in past years with the express written understanding that they would be without the prejudice to either party's interpretation of schedule rules and that they would never be cited by either party in any other case under any circumstances. On December 23, 1963 the vice president replied, calling attention to the fact that there were significant differences in the facts involved in any previous settlements, and that citation of settlements made without prejudice is a gross breach of good faith.

POSITION OF THE CARRIER:

The Issues

The primary issue in this case is whether or not there is any existing rule or agreement which limits the type of equipment which may be utilized by the carrier in picking up derailed cars and other equipment under the circumstances involved in this case, and which grants to the Minneapolis wrecking crew the exclusive right to perform such work.

If this board should find a rule which was violated in this case then it must determine whether the claimants have suffered any legally assessable damages.

Argument on the Merits

Wrecks and derailment of trains are inherent in the operation of any railroad. However, it is obviously impossible to anticipate where, when or how such accidents will happen. Therefore, it is only possible for the carrier to take a limited amount of preparatory action to cope with that portion of railroad operations.

The vast majority of derailments are of a minor nature. Over the years the very simple devices and techniques have been developed to aid train crews and other immediately available personnel in correcting such derailments. Every train is equipped with frogs, rerailers and chains for use in such minor derailments, and every crew is experienced in their use. Likewise, every truck section gang is experienced in assisting train crews in such simple derailments by furnishing their labor and such materials as track jacks, bars, ties and other blocking.

There are many occasions, of course, where cars and engines are so badly derailed or track damage is so extensive that the equipment cannot be rerailed and the right of way cleared without the use of special equipment. Some of that special equipment, such as light mobile cranes and bulldozers, can be and is utilized daily in other maintenance operations of the railroad. However, it is also necessary to have very heavy specially constructed lifting cranes which are so designed that they

cannot be readily utilized in operations other than wrecking service. Such cranes are assigned to the car departments at various points over the railroad and held in standby status solely for the purpose of working at serious wrecks and derailments and whatever other limited tasks they are able to efficiently perform. At the time that this claim arose the carrier had such wrecking cranes, ranging from 50 to 250-ton capacity, distributed over its system at twelve separate locations.

It is obvious that the greater the number and the larger the variety of such equipment which the carrier could have distributed over its system the better its position would be to quickly and efficiently clear up any wreck or derailment. However, since such machinery is extremely expensive and is productive for only a very small percentage of its available time, the number and variety of such machines must be limited. In order to efficiently, safely and economically clear up the majority of its wrecks and derailments, the carrier must depend upon utilizing other general purpose machinery which is being used daily in other departments or which can be quickly rented or borrowed from other railroads or outside firms.

It has always been the practice to utilize all available equipment either owned by the carrier or which can be borrowed or rented from other railroads or outside firms when it appears that the safe, economical and expeditious clearing of a wreck or derailment requires that such equipment be used either in lieu of, or supplementary to the specialized wrecking cranes assigned to the car departments. As pointed out in the carrier's statement of facts, the management decided that the large wrecking derrick and crew which were stationed at Minneapolis were not needed for the derailment in question and that the emergency situation did not allow waiting for that equipment to be brought to Willmar in any event. The fact that the two carmen stationed near Willmar were able to take care of the derailment quickly with the help of the truck crane proves that the carrier's judgment was sound. It has been repeatedly held by this board that such business decisions are management prerogatives which must not be interfered with unless the right to make such decisions has been contracted away to the organization by clear and specific contractual language.

The following are recent statements of that principle:

Award 3270, Machinist v. GN, Referee James P. Carey, Jr.:

> "* * * The Carrier's exercise of a sound business judgment with respect to the most economical and efficient conduct of its operations should not be interfered with in the absence of clear and convincing evidence that its claimed business reasons are without reasonable support."

Award 3630, Carmen v. T. & N. O., Referee James P Carey. Jr.:

> "It is the fundamental principle of the employer-employe relation that the determination of the manner of conducting the business is vested in the employer except as its power of decision has been surrendered by agreement or is limited by law. Contractual surrender in whole or in part of such basic attributes of the managerial function should appear in clear and unmistakable language."

This board has consistently recognized that the organization bears the burden of proving that the carrier has restricted its right to freely exercise its managerial prerogatives, as follows:

Second Division **Award No. 3246,** Carmen v. Southern, Referee Roscoe G. Hornbeck:

"* * * The burden is on the organization to show a violation either of the applicable rules or the agreement. * * *"

Third Division **Award No. 6359,** O.R.T. v. St L.S.W. Referee Donald F. McMahon:

"'After a complete review of the record and exhibits presented by the Organization, we must hold that the burden of proof is on the one who asserts the claim. Mere words that a violation has occurred are not sufficient without positive evidence to substantiate the allegations as made. * * *."
Third Division **Award No. 9609,** M. of W. v. B. & M.. Referee Martin I. Rose:

"'* * * We have many times held that mere assertions cannot take the place of proof.' Award 8062. And this Division has also repeatedly held that the burden of proving a claim rests on the party seeking its allowance.

"Awards 8206, 8376, 8486. Particularly pertinent here are the observations of this Division in Award 8486 where it is said that:

'The Railway labor Act did not design that proceedings before the several divisions of the Adjustment Board should be technical but some actual proof besides uncorroborated statements which have been denied at least by implication in contrary statements is necessary to assist the Board in a proper decision. * * *' "

Throughout the handling of this case on the property, the Organization has pointed out no contractual language which would limit the carrier's right to utilize the locally available carmen and outside truck crane to perform the rerailing work at Willmar. The only rules the organization has alleged were violated are Schedule Rules 42(a) and 88, which read as follows:
"Rule 42(a). Assignment of Work.

None but mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft, except Foremen at points where no mechanics are employed."
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 Rule 17 and 22.

When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within the yard limits, sufficient carmen will be called to perform the work.

Meals and lodging will be provided by the Company while crews are on duty in wrecking service.

When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classifications."

Rule 42(a) obviously begs the question in this case because it merely reserves to mechanics, with certain exceptions, the exclusive work of each craft as it is specifically defined in the "special rules of each craft." The rule does not specify that the work involved in the instant case is carman mechanic's work; nor does it

specify that wrecking crew carmen have a preferential right over ordinary carmen or anyone else to any of the work performed at Willmar. Therefore, the rule has no applications whatsoever, unless one of the "special rules" can be found which defines the work in question as exclusively the work of wrecking crews under all circumstances. Since Schedule Rule 88, quoted above, is the only rule pointed out to support the contentions of the organization, it is the only rule which can be considered a "special rule" as referred to in Rule 42(a). It is apparently the organization's contention that the work in question is defined as reserved exclusively for members of the Minneapolis wrecking crew under Rule 88.

There is no language whatsoever in Rule 88 which reserves to a regularly assigned wrecking crew the right to perform all rerailing work such as that performed at Willmar on the day in question. The second paragraph of that rule clearly requires the carrier to use the regularly assigned crew and derrick only "when wrecking crews are called." The rule clearly allows the carrier the option of using or not using the wrecking crew according to the needs of the particular situation.

Schedule Rule 88 is not an unusual rule in this industry, and this board has recognized in the following awards that essentially identical provisions in other agreements require that the regularly assigned crew be used only when the carrier determines that the wrecking derrick is needed and is called:

Award No 2049, Carmen v. G.C.L, Referee David R. Douglass:

> "The record does not indicate to this Board that by virtue of rules or by past practice the work of rerailing cars is the exclusive work of the regularly assigned wrecking crew when said crew is not called or when the wrecking outfit or crane is not used. When such conditions exist which require the use of the wrecking outfit, and such is used, the work belongs to members of the regularly assigned crew in accordance with the provisions of Rule 113 and Rule 114."

Award No. 2208. Carmen v. M.K.T., Referee Edward F. Carter:

> "With reference to that part of the claim that carmen only can rerail locomotives and cars outside of yard limits, we hold against the claimants. Where wrecking crews are called for wrecks or rerailments outside of yard limits, carmen regularly assigned to a wrecker crew are entitled to the work under Rule 67(c) (similar to the second paragraph of Rule 88 in the instant case). But in the present case, the wrecker outfit was not called. In fact, claimants were not even assigned to the wrecker crew. When a wrecker outfit is not called, the rerailing of locomotives and cars is not the exclusive work of carmen. Awards 2049, 1763, 1747, 1482, 1322. The claim for rerailing the cars is not valid."

Award No. 3859, Carmen v. B. & O., Referee Howard A. Johnson:

> "While a hostler was taking three diesel units to a roundhouse track where a road crew awaited them, the front wheels of the first truck were derailed. Four roundhouse employes under the genral locomotive foreman's direction placed some blocks. the hostler backed the units, and the wheels were rerailed, all in about twenty minutes.
>
> "The claim is that 'under the clear and unequivocal language' of Rule 142 'the Carrier was not authorized to use other than carmen to perform the work involved in rerailing' the diesel unit. The portion of the rule

relied upon is the final sentence providing:

> 'For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work.'

Rule 138, the carmen's scope or classification of work rule, makes no reference to wrecking service or the rerailing of engines or rolling stock, or to personnel engaged in such work, except for the provision that wrecking crew engineers shall be classified and paid as freight car repairmen and shall come under the jurisdiction of the Carmen's Organization.

The question presented here is whether the provision of Rule 142 quoted above made the rerailing of the engine wheels the exclusive work of carmen, so that the use of the hostler, the four roundhouse men and foreman violated the agreement.

This rule is one of two associated rules adopted by the Labor Board in 1921, namely Rules 141 and 142, and brought down through various agreements, with their titles and context unchanged. It seems clear that they constitute wrecking crew consist rules rather than work classification or scope rules.

Rule 141 is entitled 'Wrecking crews,' and provides in part:

> 'Regular assigned wrecking crews will be composed of carmen. where sufficient men are avaliable, * * *
>
> 'When needed men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.'

Thus not even service on wrecking crews is entirely limited to carmen.

Rule 142 is entitled 'Make-up Wrecking Crews' and contains two separate provisions, the first relating to 'wrecks or derailments outside of yard limits,' and the second to 'wrecks or derailments within yard limits.' Under these circumstances we would not seem justified in taking the final provision out of context and converting it from half of a wrecking crew consist rule to a scope rule or an exclusive jurisdiction rule."

Under a variety of conditions and under schedule rules essentially identical to Rules 42(a)and 88, this board has previously held that rented cranes or cranes from other departments using outside employes as operators could be utilized to assist carmen in rerailing cars where such equipment was needed and where it was impractical to bring wrecking derricks from long distances. In **Award 1054,** Carmen v. A. T. & S.. Referee J. Glen Donaldson, a privately-owned crane with a two or three-man crew was hired by the carrier to aid carmen in rerailing five cars which were derailed within yard limits. The award held that it was proper to use the outside crane under circumstances where the regular wrecking derrick was located 219 miles away and none of the available carmen were qualifid to operate the rented crane.

In **Award No. 2792,** Carmen v. C. M. St. P. & P., Referee D. Emmett Ferguson, a wrecking derrick and crew which had been used to clear the tracks was returned to its home station when service was restored, leaving several derailed and damaged cars. Several days later a B & B Department crane which was repairing a bridge damaged in the derailment, was used to assist carmen in placing the

damaged cars on trucks. The board denied the claim of the wrecking crew on grounds that rule similar to Rule 88 left to management the determination of when a wrecking crew was needed.

In **Award No. 3254,** Carmen v. W. P. Referee Roscoe G. Hornbeck, it was held that the use of an outside crane was proper to assist carmen in rerailing cars within yard limits where the regular wrecking derrick was located 110 miles away.

In **Award No. 4268,** Carmen v. G. N., Referee Joseph M. McDonald, an emergency situation at the same location of Willmar as is involved in the instant case was solved in the same manner by using two local carmen and the same outside garage crane.. The claims of the Minneapolis wrecking crew were denied as follows:

> "On June 21, 1960, a loaded freight car was derailed at Willmar, Minnesota, and the Carrier summoned two carmen working in the vicinity and they, with the aid of a derrick and operator hired from a Willmar garage, rerailed the car.
>
> Carrier maintains a complete wrecking outfit on the Willmar Division, which crew is located at Minneapolis, some 91 miles distant from Willmar Claimants are the regularly assigned members of this crew, and allege a violation of Rule 88 of the controlling agreement by the Carrier when it recruited outside manpower and equipment to perform this wrecking service.
>
> The situation and time elements involved become important to our consideration of this dispute.
>
> From an examination of the record we find that the derailment occurred at 11:45 A.M.; that the car was in a precarious position and was kept from tipping over by the coupling to the engine; and that while not blocking a main line, it was disrupting switching operations to the main line.
>
> We find that the two carmen arrived at the scene at 1 :30 P.M., and the crane and operator about 1:50 P.M., and that the car was uprighted at about 2:40 P.M., when the crane and operator left and the two carmen continued the rerailing and with the aid of the switch engine had the car back on the tracks at 4:00 P.M.
>
> "In the emergency situation presented, it was management's decision to proceed as it did or to call the wrecking outfit from Minneapolis.
>
> We find that in the circumstances here, the Carrier was exercising its managerial prerogative to expedite a dangerous and emergent situation and was not acting in violation of the controlling agreement."

Even where a wrecking crew is called and used to pick up a derailment, this Board has recognized that it may be appropriate to employ a crane and operators from outside the car department, as in **Award No. 4303,** Carmen v. G. N., Referee Ben Harwood. In that case this board rejected the contentions of the organization that Schedule Rule 88 had been violated on grounds that the wrecking crew could have performed the work without assistance in only a few additional hours time, because "* * * the decision as to the methods and machinery and equipment to be used for the rerailing work to be accomplished at the distant location in question was the responsibility of management"

From the foregoing it is clear that the carrier reasonably and properly exercised

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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