

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood Railway Carmen of the United States  
( and Canada

Parties to Dispute: (

(Alton and Southern Railway Company

Dispute: Claim of Employees:

1. That Carrier violated the current agreement when wrecking crew members Mr. Gardner, Mr. Davis and Mr. Thomas, were not allowed to accompany the cline wrecking truck and off track crane on June 28, 1983.

2. That accordingly, Carrier be ordered to additionally compensate the above named wrecking crew members as follows: Five (5) hour call each for Mr. Gardner, Davis and Thomas.

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 employes 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.

Claimants are regularly assigned members of the wrecking crew at the Carrier's Gateway Yard in East St. Louis, Illinois.

On June 28, 1983, there was a derailment at Mile Post 4 on the main line, two miles north of Gateway Yard. The Carrier dispatched the Cline Wrecking Truck, the off track crane, and four Carmen to the derailment site. Three of the Carmen were regularly assigned members of the wrecking crew, one was not.

The Organization then filed a Claim on the Claimants behalf, charging that the Carrier had not assigned a sufficient number of wrecking crew members to the site and that the four Claimants each were entitled to five (5) hours' pay.

The Organization contends that the Carrier violated the Memorandum of Agreement that revised Rule 51 of the Current Agreement, effective May 1, 1976. The Memorandum of Agreement provides, in part:

"However, when the Cline wrecker truck or other company-owned off-track equipment is dispatched, three regular members of the wrecking crew will accompany the truck or other off-track equipment, at least one of whom will be qualified to operate the equipment used. The senior qualified employee as among those called will be given preference in operating the truck or other equipment used when required."

The Organization asserts that this language clearly establishes that three regular members of the wrecking crew must accompany each truck or other off-track equipment.

The Organization points out that in this case, the Carrier used two such pieces of equipment. Under the Memorandum of Agreement, the Organization argues that the Carrier should have assigned three wrecking crew members to accompany each piece of equipment. The Organization asserts that by assigning one three-man crew, rather than two crews, the Carrier violated the Memorandum of Agreement. The Organization therefore contends that the Claim should be sustained.

The Carrier contends that it has only one wrecking crew; the Memorandum of Agreement applies only to that single crew. The Carrier maintains that the Memorandum of Agreement does not require it to establish or use separate wrecking crews for each piece of equipment at a derailment site.

The Carrier contends that historically, only one wrecking crew is assigned at a location, and the single crew uses whatever pieces of equipment are available and necessary in case of a derailment. The Carrier asserts that wrecking crews never have been established on the basis of the number of pieces of equipment used for rerailing cars. A separate wrecking crew never has been assigned for each piece of equipment used at a derailment site.

The Carrier contends that it met the requirements of the Memorandum of Agreement when it dispatched three regular members of the wrecking crew, the only regularly assigned wrecking crew, with the Cline truck. The Carrier further asserts that three Carman is the normal complement at a derailment site; in this case, a fourth Carman later drove the Pettibone Crane to the derailment scene and then operated the crane.

The Carrier points out that the Organization has not shown when five or six Carman have been used at a derailment site or under what circumstances. The Organization has failed to prove that six Carman have ever been assigned to a derailment scene because two pieces of equipment were in use. The Carrier therefore contends that the Claim is without support and should be denied in its entirety.

This Board has reviewed all of the evidence in this case, including the relevant contractual language contained in the Memorandum of Agreement, effective May 1, 1976, and it finds that nothing in the Memorandum of Agreement requires the Carrier to assign one three-man crew to each piece of equipment at a derailment site. A clear and reasonable reading of the provision establishes that the Carrier must assign three members of the wrecking crew to a site when off-track equipment is used. The Carrier fully complied with the Agreement when it sent a single three-man crew to the derailment site; it was not required to send two crews merely because two pieces of equipment were used at the site.

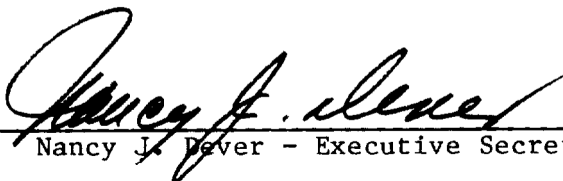
Moreover, the Organization has not provided any evidence that past practice requires that the Carrier assign a separate crew for each piece of equipment. This Board consistently has held that in cases such as this one, the Organization has the burden of proving its Claim of past practice with probative and substantial evidence. Without any evidence of past practice or any contractual language to support the Claim, this Board finds that the Agreement has not been violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.