

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That the Burlington Northern Railroad Company violated the terms of our current Agreement, particularly Rule 119 when they failed to call Memphis Carmen P. E. Miller, L. P. Barroni and W. R. Myers for a derailment at Kennett, Missouri on March 23, 1987.

2. That accordingly, the Burlington Northern Railroad Company be ordered to compensate the above named claimants in the amount of forty-three and nine-tenths (43.9) hours each at the time and one-half (1.5) rate for their rate and class.

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.

Prior to March 20, 1970, Carrier had in service at its Memphis terminal a 250 ton wrecking derrick. Six Carmen were assigned to the derrick as members of a wrecking crew. Effective on or about March 20, 1970, a Holmes RC-50 rubber tired truck crane was placed in service at Memphis to adjust shifting loads and move cars from track to track within the terminal. On occasion the mobile unit was to be used outside the terminal in wrecking service. On November 12, 1970, an understanding was reached with the Organization that when used in such circumstances two groundmen from the wrecking board would be assigned, on a rotating basis, to accompany the unit.

In 1979, the Holmes RC-50 crane was replaced by a 125 ton rubber tired truck crane. When this unit was used outside Memphis terminal limits in wrecking service the practice of selecting groundmen from the wrecking board remained in effect.

In August 1983, the Memphis wrecking derrick was transferred to Denver. The wrecking board at Memphis was not abolished when the equipment was transferred. It was retained as a means of distributing the work of groundmen when the 125 ton crane was utilized in wrecking service outside terminal limits.

On March 27, 1987, the 125 ton crane was dispatched to Kennett, Missouri to work on a wreck. Three Carmen from the wrecking board accompanied the unit. The Organization contends that Rule 119 of its Agreement was violated because the entire crew, six members, were not called. Rule 119 reads:

"Wrecking Service.

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

In support of its arguments, the Organization points out that the wrecking crew at Memphis was never abolished and that the 125 ton rubber tired unit replaced the wrecking derrick, thus when it is used outside yard limits the entire crew must be assigned. The Organization recognizes that previously when the rubber tired unit was used only two groundmen were assigned, but argues that if this established a practice, it nonetheless is contrary to clear and unambiguous contract language and, as such, the Rule must be enforced.

Carrier acknowledges that the wrecking crew was not abolished when the 250 ton derrick was transferred because it continues to be a source for assigning carmen to work at wrecks and derailments when outside contractors are used under authority of Article VII of the December 4, 1975 National Agreement. Also, the Agreement made with the Local Committee in 1970, requiring that Carrier draw two groundmen from the wrecking board to travel with the truck crane, remained in place after the 250 ton derrick was removed from Memphis. However, it argues that continuation of the crew does not now require that all members accompany the rubber tired unit when it leaves the terminal.

It is clear that in late 1970 an understanding was reached that two groundmen would accompany the rubber tired crane when it left the terminal for wrecking service. It is also clear that the groundmen selected were to be picked from the wrecking crew. These practices continued after the initial vehicle was replaced and they were also continued after the 250 ton wrecking derrick was removed from Memphis. These practices were not inconsistent with the Agreement when they were instituted and they are not deemed to be inconsistent with the Agreement now that the wrecking derrick has been relocated.

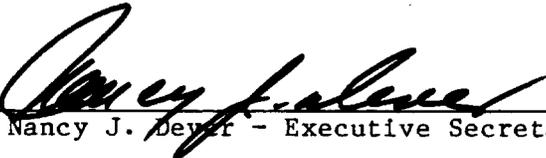
The Claim is without merit and will be denied.

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 1st day of August 1990.