

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(Brotherhood Railway Carmen of the United States  
( and Canada

Parties to Dispute: (

(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad company violated the controlling agreement when Wrecker Crewmen D. C. McDaniels, T. H. Williams and G. W. Rumph were not called to a derailment along with the rest of the crew on Wrecker No. 3 at Kennesaw, Georgia on October 1, 1978.

2. That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate these three (3) wrecker crewmen who were assigned to Wrecker No. 3 the amount they would have made had they been called in the proper manner to fill these assignments and that they be made whole for any other benefits that would have been accrued in a normal flow of circumstance.

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 employees 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.

At 5:00 P.M. on either September 30 or October 1, 1978, the record is unclear on this aspect of the case, the Carrier called out both the #1 and #3 Atlanta Wrecking Crews to work a tank car derailment at Kennesaw, Georgia. The full complement of the #1 Atlanta Crew was called out and responded; however, after having been properly called, only one Operator, one Foreman, and one Groundsman from the #3 Wrecking Crew responded to the call. Thereafter, the Carrier determined that the response was sufficient to perform the task and dispatched the full #1 Crew and the partial #3 Crew to Kennesaw. The Carrier in this dispute did not fill the Wrecking Crew from the Overtime Board, and the record further indicates that Claimants would have been the next three (3) Carmen called from that Board.

A Claim was timely filed by the Organization; the applicable time limits were extended; and this dispute is properly before this Board.

The Organization, in its argumentation, contends that the Carrier violated Rule 103(b) of the Controlling Agreement which specifies:

"When wrecking crews are called for wrecks or derailments outside of the yard limits, a sufficient number of regularly assigned crew will accompany the outfit".

The violation, according to Organization, occurred because Carrier did not send a sufficient number of Carmen from the #3 Wrecking Crew to accompany the wrecking outfit. The Organization argues alternate theories in an attempt to prove that the Carrier did not send a contractually sufficient number of employees of the Carmen Craft to work the Kennesaw wreck. The Organization's first line of argument attempts to define the concept of "sufficient number" in terms of Carrier's actions herein. Basically, the Organization maintains that, by calling the entire #1 Wrecking Crew, the Carrier thus admitted that a "sufficient number" meant a number equal to the entire Crew, and hence the Carrier violated the applicable Rule by merely dispatching only part of the #3 Wrecking Crew. The Organization's alternate theory is based on an alleged violation of applicable seniority provisions. In this regard, the Organization contends that Carrier bulletined the Wrecking Crew assignments separately, thus creating separate Seniority Districts for each Wrecker. Upon consideration by this Board, the Organization's alternate argument, if applied to these facts, would mean that when and if the #1 Wrecker Groundsmen worked with the equipment of the #3 Wrecker, those Carmen would be working outside of their bid positions in violation of the collectively bargained Agreement. Therefore, if the Carmen at the site had to perform tasks outside of the contract, the Carrier did not send a sufficient number of Carmen.

The Carrier counters the Organization's allegations by arguing that the Organization failed to cite or prove a violation of a currently applicable Rule. In support of its basic position, the Carrier asserts that it complied with the Wrecking Rules by calling out the entire #3 Wrecking force, since the Agreement only requires the act of calling out and does not require the Carrier to supplement the Crew from the Overtime Board. Basically, the Carrier asserts that Organization failed to sustain its burden of proof.

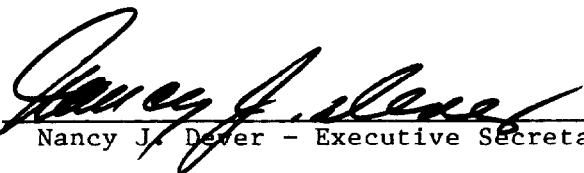
The Board agrees with the Carrier's position as presented herein. The record in the instant case fails to establish that the Carrier was contractually required to do more than call the Wrecking Crews. Furthermore, the Organization has failed to offer any evidence that the separate Wreckers have separate Seniority Rosters. Moreover, the record is totally devoid of evidence demonstrating any cross-utilization between the #1 and #3 Wrecking Crews in such instances. The Organization thus has failed to prove a contract violation and the Claim is consequently 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 9th day of July 1986.