

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when, from April 14 through 25, 1986, the Carrier assigned a tractor to Crew 306 at Rosholt, South Dakota without recalling a furloughed sectionman to the crew (System File R295 #1552W/800-46-B-263).

(2) The Agreement was further violated when, from May 15 through June 13, 1986, the Carrier assigned a tractor to Crew 310 at Enderlin, North Dakota without recalling a furloughed sectionman to the crew (System File R296 #1498P/800-46-B-261).

(3) As a consequence of the violation referred to in Part (1) above, furloughed Sectionman D. M. Wieser shall be made whole for all straight time, overtime, vacation credits, fringe benefits and other rights lost as a result of the violation.

(4) As a consequence of the violation referred to in Part (2) above, furloughed Sectionman W. D. Pritchert shall be made whole for all straight time, overtime, vacation credits, fringe benefits and other rights lost as a result of the violation."

FINDINGS:

The Third 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.

The Organization alleges that between April 14, 1986, and April 25, 1986, the Carrier improperly assigned a tractor operator to Crew 306 at Rosholt, South Dakota, without recalling any furloughed sectionmen. The same tractor was allegedly assigned to Crew 310 from May 15, 1986, to June 13, 1986, at Enderlin, South Dakota. Again, the Organization contends that the Carrier should have recalled the senior furloughed Crew 310 sectionman.

The Carrier submits that the tractor operator position was continuously headquartered with Crew 308 at Hankinson, North Dakota. The tractor did not work with another gang for more than thirty days and so, the Carrier asserts, it was unnecessary to bulletin a tractor operator position on either Crew 306 or Crew 310. Also, the Carrier was unable to verify if the tractor actually worked with the crews on the dates cited by the Organization during the on-the-property appeal.

This dispute is governed by Paragraph 4 of the January 1, 1985 Memorandum of Agreement which addresses the establishment of utility tractor operator positions on Maintenance of Way gangs. Paragraph 4 reads:

"Line crews will not be reduced below the crew consists list in Appendix F and yard crews will not be reduced below their normal force allowance to provide a tractor operator when the tractor operator is entitled to more than one full day's pay at the tractor operator's rate under Rule 31, Composite Service."

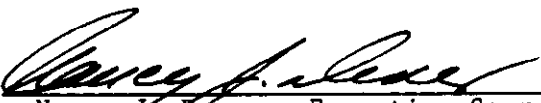
The Organization bears the burden of proving the underlying facts in its claim. To prove a violation of the January 1, 1985 Memorandum of Understanding, the Organization must provide factual evidence that a line crew was reduced below the minimum staffing levels listed in Appendix F or a yard crew was staffed with less than the normal force allotment. The record in this case does not show the level of forces on the two crews while the tractor operator performed service with the gangs. More importantly, the record does not contain any evidence that the level of forces on the crews dropped below the minimum contractual level during the periods covered by this Claim. In summary, the Board must deny this Claim for want of proof.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1990.