Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7246
SECOND DIVISION Docket No. 7032
2-SCL-CM-'77

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

Parties to Dispute: (System Federation No. 42, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. That the Seaboard Coast Line Railroad Company violated terms of Article V of the Agreement of April 24, 1970 when they denied double time payment for service rendered on second rest day for Mr. Beorge R. McDonald.

2. That the Seaboard Coast Line Railroad Company be ordered to compensate Mr. George R. McDonald an additional four (4) hours at pro rata rate for service on November 24, 1974.

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.

The issue to be decided in this docket is whether the work performed by Claimant on his first rest day, November 23, 1974, came within the exception contained in Article V of the National Agreement of April 24, 1970, i.e. was the work performed "emergency work". There is no dispute with respect to the Claimant working all the hours of his assignment in the work week. Article V of the National Agreement of April 24, 1970, provides for the payment of double the basic straight time rate for work performed on the second rest day of an employee's work week provided he worked all the hours of his assignment in that work week and worked on his first rest day with the following exception:

> ".....,except that emergency work paid for under the call rules will not be counted as qualifying service under this rule, nor will it be paid for under the provisions hereof."

The claim is for an additional four (4) hours pay at the pro rata rate for service on Claimant's second rest day on the grounds that the service performed on the first rest day was not "emergency work" and therefore the exception in Article V does not apply.

Petitioner agrees that there is no dispute with Carrier (page 1 of Employees Rebuttal) as to the work performed by Claimant on his first rest day. Claimant rerailed a loaded car at Durand, Georgia; then went to Fields, Georgia to change a damaged wheel on a car loaded with gravel; then to Bineville, Georgia to change a damaged wheel on a car loaded with limestone. Claimant also performed service at other locations. The record shows that the derailed and damaged cars were located in pass and/or spur tracks in single track territory and, as asserted by the Carrier, if not promptly repaired would have seriously affected the Carrier's operation. It was for this reason that the Carrier deemed the work to be of an emergency nature.

Petitioner premised his argument on the fact that the damaged cars were not blocking the main line and that, therefore, no emergency existed. Petitioner cited Third Division Award No. 4354, among others, as defining what constituted an emergency, to wit:

> "An emergency has been previously defined in awards of this Board. It has been said that it is suggestive of 'a sudden occasion; pressing necessity; strait; crisis.' It implies a critical situation requiring immediate relief by whatever means at hand."

Petitioner also cited Third Division Award No. 2040 which stated in part:

> "Webster's defines emergency as 'a sudden occasion; Pressing necessity; strait; crisis.' It implies the unusual rather than the usual; the extraordinary rather than the ordinary."

Also cited by Petitioner was Second Division Award No. 5484, regarding the concept of burden of proof, as follows:

> "In asserting that an 'Emergency' existed, Carrier thus is raising an affirmative defense, and the burden of proof is upon the Carrier to prove such defense by competent evidence."

What is the competent evidence in the subject case? There is no disagreement between the parties to the fact that the damaged cars (presumed by logic to be inoperative) which were repaired by Claimant-such service being the reason for the Call-were in passing and/or spur tracks, were blocking said tracks, and that said tracks were located in single track territory. Under these circumstances the Carrier determined that if the

needed repairs were not promptly made its operations would have been seriously affected, a decision that could only be made by the Carrier. In this situation one could hardly successfully argue that in order to determine the existence of an emergency a carrier would have to wait until its operations were actually impaired through not having had the needed work performed. To have done so would conceivably have exposed the Carrier to the defense of charges of a greater magnitude than are herein present! Having determined that the subject work could not be postponed and thus be performed by regularly assigned forces the Carrier was obligated, by applicable provisions in the Agreement, to pay a penalty rate to the Claimant and this was done.

We find that, in this particular case, the Carrier met the burden of proof in asserting the existence of an emergency - the situation was "unusual rather than usual; ... extraordinary rather than ... ordinary." Therefore, the referrenced exception in Article V of the National Agreement of April 24, 1970, applies and we will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of March, 1977.