Award No. 2619
Docket No. MW-2657

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood—

(a) That the Carrier violated the seniority provisions of the Agreement when Section Foreman E. E. Webster and his gang consisting of 11 men, assigned to Section 205, Cincinnati Division, were denied the right to perform service on their own section on January 8, 1943 for 13 hours while the gang from Section 202, Cincinnati Division, were required and assigned by the Carrier to perform the work; and

(b) That E. E. Webster and his gang be paid for 13 hours January 8, 1943 at the rate of time and one-half time.

EMPLOYES' STATEMENT OF FACTS: Section 205 in charge of Foreman E. E. Webster comprises the yard trackage in Cincinnati and certain other trackage south of Ohio River in Kentucky. On January 8, 1943 certain services were required on the trackage in Cincinnati necessitating overtime work. Instead of permitting Foreman Webster and his crew to perform the services requiring overtime work, the foreman and men on Section 202 were assigned to perform this overtime service.

POSITION OF EMPLOYES: For the purpose of maintenance of trackage and track facilities the railroad is divided into certain units or sections, each section being in charge of a foreman, who has a number of laborers under his supervision. As indicated in Employes' Statement of Facts, Section 205 comprises the yardage in Cincinnati and certain other yardage and trackage in Kentucky. Section 202 comprises yardage and trackage located exclusively in Kentucky.

A regular crew consisting of foreman and a number of laborers is assigned to each section. The foreman is held accountable for the condition of the section to which he is assigned, and is expected with the assistance of the laborers assigned to his section to maintain it in serviceable condition. Thus, each section is a unit comparable with that of a telegraph station or any other service unit on the railroad. Thus, the section foreman and the laborers assigned to a particular section are entitled to all work on that section which they are capable of performing just as much as a telegraph operator is in the station to which he is assigned. By that token, it be just as improper to assign a section crew from another section to temporarily displace the section crew on a given section as it would to assign a telegrapher from another station to perform overtime work in a station to which a certain telegrapher may be assigned.

tention of the Carrier here. In that Award the employes contended that the section foreman in charge of that section was entitled to be called for any track work on his section, but the Board in its wisdom did not hold to this view, but held to the principle that such a practice was not obligatory under all conditions. We quote that decision:

> "Agreements between carriers and brotherhood are intended to promote efficiency as well as harmonious relations, and the public looks to this Board for fair interpretations of the rules to that end."

The claimant, Foreman E. E. Webster, not only made his full days but overtime as well, a total of 43½ hours in nine days. On the particular night in question having worked under these adverse conditions for ten hours to then have worked this gang all the balance of the night would have clearly unfitted it for duty the next morning, and left the section unprotected. Certainly good judgment was used in this emergency. No provision of the agreement was violated, and the Supervisor was actuated in handling these men by desire to work no hardship on Foreman Webster and his men.

In view of these circumstances it is hoped and believed that this Board will confirm the Carrier's position and deny the employes' claim.

OPINION OF BOARD: Claimants are the Section Foreman and the members of his crew, regularly assigned to the maintenance of Section 205, Cincinnati Division. The carrier's East End Freight House and Yards are a part of that Section. Early in 1943 the platform and tracks of said Freight House and Yards were inundated by the overflow of the Ohio River. In an effort to save its property and restore service thereon the carrier called the foreman and crew of Section 202 and worked them on an overtime basis on Section 205.

Sections 202 and 205 are in the territory of the same division engineer and this places the members of said crews in a common seniority district, by virtue of Rule 4 of the effective Agreement of March 1, 1938. Rule 17 (e) of said Agreement provides, however, that:

> "Section and extra gang laborers shall be permitted to make written application to the Division Engineer, for vacancies or new positions, expected to last 60 or more working days in any gang, on their seniority district, in which they may wish to place themselves, and they are then to be assigned to such vacancies or new positions in accordance with their seniority."

Rule 17 (e) would seem to recognize that the members of each crew constitute an integral unit of their district and that they are entitled to enjoy the protection of seniority with respect to the distribution of such work, including overtime, as may become available on their particular section. If it were otherwise there would be no occasion for said rule.

The carrier concedes that "it is the general practice when it is necessary for overtime to be worked on a certain section, to have it done by the gang on that section, unless that procedure would impose undue hardship on the men and result in inefficient work."

In meeting an emergency of the character here presented, the carrier must, of necessity, be allowed a measure of latitude. This, in turn, calls for the reasonable exercise of a sound discretion. Whether the carrier's conduct in the instant case was reasonable or arbitrary raises a question of fact. In determining that question several factors must be taken into consideration. Among these are: (1) the normal preferential right of the crew of Section 205 to any overtime worked thereon; (2) the character and extent of the emergency with which the carrier was confronted; (3) the amount of overtime worked by the members of the two crews immediately prior to the assignment in question; and (4) the probable need for additional overtime work immediately thereafter.

The record discloses that between January 1 and the beginning of the period here in controversy some, but not all, of the members of the crew regularly attached to Section 205 had worked 24½ hours overtime in the aggregate. Whether the members of crew 202 had accumulated any overtime during that period does not appear. After working their regular eight-hour shifts on January 8, the members of both crews were called out for overtime on Section 205, on account of said emergency. Under this call the members of crew 202 worked 15½ hours, and those of 205 worked 2½ hours after which they were taken off for rest. The difference of 13 hours is the subject of this claim.

In the light of the above facts, we cannot say that the carrier abused its discretion by enforcing upon the members of crew 205 a period of rest, after they had worked continuously for 10½ hours under very adverse conditions; or that it was improper for the carrier to utilize the services of crew 202 in coping with the emergency on Section 205. The petitioner has apparently overlooked the very pertinent fact that the carrier was not only confronted with the problem of making a proper distribution of its available labor in accordance with the Agreement, but that it was also required to conserve its manpower for its battle with the elements, to the end that public service might be restored with the least possible delay.

This Board is not privileged to substitute its discretion for that of a party authorized to exercise discretion. Even when the proof preponderates against an exercise of discretion, we will not disturb it, if there is evidence to support the action taken. It is only in those cases where it clearly appears that there has been such an abuse of discretion as amounts to an unreasonable, arbitrary or capricious exercise of authority, will we intervene. No such case is disclosed by the record before us.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of July, 1944.