

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

- (1) That the Carrier violated the provisions of the effective agreement when it did not call Howard Stewart, Truck Driver, Portland Division, for work on Sunday, December 15, 1946;
- (2) That Howard M. Stewart be allowed six hours pay at the time and one-half rate by reason of an employee having no seniority as a Truck Driver being permitted to perform work usually performed by Howard M. Stewart.

EMPLOYEES' STATEMENT OF FACTS: As of December 14, 1946, B&B Gang Number 28, a crew living in outfit cars, was stationed at Cornelius, Oregon, on the Portland Division. About 3:00 P. M. on Saturday, December 14, 1946, B&B Foreman Reamy notified four members of this gang (namely: J. Laird, F. Jenkins, J. Seifken and M. Summer) to report for work on Sunday, December 15, 1946, at 8:00 A. M., for the purpose of making an inspection trip to several bridges in the vicinity of Newburg because heavy rains had swollen the rivers and creeks and it was felt that driftwood and other obstacles might have accumulated around those bridges thereby creating a hazard to the bridges.

Howard M. Stewart was the regularly assigned Truck Driver in B&B Gang Number 28 with a seniority date of August 22, 1946, as a Truck Driver. The seniority roster dated January 1, 1947 for the B&B sub-department, Group Number 3, shows H. M. Stewart in rank Number 3, Gang Number 28, under the caption "Truck Drivers." This roster is attached as Employees' Exhibit "A". Truck Driver H. M. Stewart was not notified to report for duty on Sunday, December 15, 1946.

On Sunday morning, December 15, 1946, B&B Carpenter J. Seifken was assigned by Foreman Reamy to drive the truck. For a period of six hours on that date Seifken drove the truck to the various bridges to be inspected and back to the crew's headquarters at Cornelius. Carpenter J. Seifken has no seniority as a Truck Driver.

H. M. Stewart lives at Hillsboro, approximately three or four miles from Cornelius and had returned to his home at the close of work Saturday, December 14, 1946.

No attempt was made to call Truck Driver H. M. Stewart for service on Sunday, December 15, 1946.

CONCLUSION

The carrier submits that it has established that the claim in this docket is without basis or merit and respectfully requests that it be denied.

(Exhibits not Reproduced.)

OPINION OF BOARD: Four employes of B&B Gang Number 28 were called for work on Sunday, December 15, 1946. They were conveyed by truck to and from their work. The truck was driven by one of the four employes called who had no seniority as a truck driver. Claimant was the regularly assigned truck driver in B&B Gang Number 28. He claims reimbursement for time lost which was worked by an employee having no right to it.

The record shows that claimant was assigned 8:00 A. M. to 4:30 P. M., with thirty-minute meal period, daily except Sundays and holidays. The record clearly indicates that claimant had a right prior to that of the employee who performed the work. The Carrier contends that claimant was not available and that it could with propriety assign it to another.

In this respect the record shows that claimant was assigned to B&B Gang Number 28 and that his home station was Cornelius, Oregon. On Saturday, December 14, 1946, claimant was given permission to spend the weekend at his home in Hillsboro, a point three or four miles from his home station. It appears, also, that the foreman of the employes called for the Sunday work had intended to use a motor car for transportation, but on Sunday morning he decided that weather conditions would permit the use of the truck. Without making any attempt to call claimant, the foreman directed one of the employes called to work, to drive the truck. Claimant did not have a telephone. Was claimant available to perform this Sunday work?

Under the facts here shown, we think the Carrier was obliged to call claimant to perform this work. Of course, if claimant could not be found after a reasonable attempt to contact him had been made, the Carrier would be justified in calling someone else. The record here shows that the Carrier made no attempt whatever to contact the claimant. He was only three or four miles away from his home station, not an unreasonable distance under modern methods of transportation. We agree with the Organization that the Carrier wrongfully ignored the seniority rights of the claimant.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

That the Carrier and Employes involved in this dispute are respectively Carrier and Employee 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 Agreement was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1948.