

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) That the Carrier violated the agreement by not calling Machine Operator Marion Francis, Chicago Terminal, to perform emergency service on February 13 and March 1, 1948.

(2) That the claimant be compensated for five and one-half hours at the time and one-half rate for February 13, 1948, and five and one-half hours at the time and one-half rate for March 1, 1948.

(3) That the claimant be allowed the difference between time and one-half rate and pro rata rate for the eight hours of his regular assignment on March 2, 1948.

EMPLOYEES' STATEMENT OF FACTS: Mr. Marion Francis is the senior machine operator in the Chicago Terminal.

On the night of February 13, 1948, and again on the night of March 1, 1948, the Carrier required the use of a Weed Burner Machine for snow melting purposes at Markham Yards.

The Carrier failed to call Operator Francis, the senior operator for the assignment, but instead called an operator junior to Francis. This junior operator was called at 10:00 P.M., March 1, 1948, and worked continuously until regular quitting time, March 2nd. This junior employee was compensated at time and one-half rates for his regular assigned hours on March 2nd, because of the provisions of Rule 39 (c).

The same situation prevailed on the night of February 13, 1948. Again the Carrier failed to call Francis but rather called an employee junior to Francis.

The Employees contend that Operator Francis should have been called and was entitled to this referred to overtime.

The Carrier has denied our claim.

Moreover, if Operator Francis had performed the emergency service referred to on the nights of February 13th and March 1st, he would have then

Weed burners and similar machines have been used on this property since prior to 1934 for melting snow and keeping switches and tracks open. To maintain switches, turnouts, etc., we also utilize Storm Kings during winter months in switches, turnouts, etc., to melt snow. The Carrier prior to and since 1934 has employed casual laborers temporarily during heavy snow storms along with the weed burners and other machines to the extent available and necessary.

Without prejudice to the foregoing position, there are no rules in the existing rules agreement or practice in effect supporting Item 3 of Employees' claim.

The Carrier contends that:

1. Claimant was correctly paid.
2. Claimant was called for work in conformity with his prior choice.
3. There was an emergency and there was no violation of the agreement.
4. The work in question is not covered by the agreement.
5. The claim should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: On the dates stated in the claim, an emergency arose which required the services of a machine operator to operate a weed-burning machine to melt snow in the Markham Yards. The Carrier called an employee junior in seniority to this claimant who claims pay for work lost.

There are four yards in the Chicago terminal area which are here involved—Markham, South Water, 27th Street and Hawthorne. The Carrier issued a bulletin requesting employees subject to call as machine operators to indicate a preference for overtime work at these named yards. Claimant indicated Markham Yard as his third preference. The junior employee used indicated it as his first choice. The Carrier states that it appeared at the time that claimant would be required to be used on overtime work at Hawthorne Yard, his first preference, and for that reason he was not called.

The designation of preference by these employees was not a waiver of seniority and no right to work was lost by the preferences made. The preferences may properly be recognized only when work in two or more yards exists simultaneously. But where overtime work exists only in one yard, it belongs to the senior employee irrespective of the preferences he has indicated. There must be work existing in two or more places before there can be an exercise of a preference. At the time complained of there was emergency overtime work existing only in Markham Yard. The senior machine operator should have been called. Claims (1) and (2) should be sustained at the pro rata rate.

There is no merit in claim (3). Claimant was called to work on March 2 at 3:30 A.M. and worked continuously until 6:40 P.M. of said day. He is entitled to the overtime rate from 3:30 A.M. to 7:30 A.M., the pro rata rate from 7:30 A.M. to 4:00 P.M., it being his regular assignment, and the overtime rate from 4:00 P.M. to 6:40 P.M., the time he was released from service. He was so paid and no basis for claim exists.

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 Employees involved in this dispute are respectively carrier and employees 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.

AWARD

Claims (1) and (2) sustained at pro rata rate. Claim (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1950.