

Award No. 5944

Docket No. MW-5819

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

David R. Douglass, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**THE DELAWARE AND HUDSON RAILROAD CORPORATION**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood, that:

(1) The Carrier violated the effective agreement when they failed to call Trackman Layton Holcomb to perform overtime service on December 15, 1948, and in lieu thereof, assigned the work to junior employees;

(2) Trackman Layton Holcomb be allowed three and one-half (3½) hours' pay at his respective overtime rate because of the violation referred to in part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** On December 15, 1948, Mr. Layton Holcomb was the senior trackman employed on Section D-3.

At approximately 7:30 P. M. on the aforementioned date, two Trackmen who were junior in service to Mr. Holcomb were called to perform overtime service in connection with snow removal on the Carrier's track facilities on Section D-3. The service performed consumed three and one-half hours for which the junior Trackmen were paid at their overtime rates of pay.

Although Mr. Holcomb was readily available on the aforementioned time and date, the Carrier made no effort to call him for the overtime assignment. A claim was filed in behalf of Trackman Layton Holcomb for three and one-half hours pay at his overtime rate because of the Carrier's improper assignment.

Claim was declined.

The agreement in effect between the two parties to this dispute dated November 15, 1943 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYES:** As stated in the Employees' Statement of Facts, the Carrier assigned two Trackmen junior in service to Trackmen Layton Holcomb, to overtime work occasioned by snow, on the evening of December 15, 1948.

It is not disputed by the Carrier that Trackman Layton Holcomb is the senior Trackman employed on Section D-3, the location at which the disputed

A snow storm started after the regular working day and it was necessary to call out sectionmen to shovel snow. The foreman called the men who had worked that day on that section and who had previously been used for such service and instructed them where to work. Holcomb, having been temporarily assigned to another outfit as well as not normally used for such work, was not called for the overtime work.

**POSITION OF CARRIER:** There had been light flurries of snow during the afternoon of December 15, 1948 which had not required removal. However, a severe storm started around 7:30 P.M. which required the section force to clean switches and road crossings. At the time the men finished their regular tour of duty, it was not known that there would be any occasion to work during overtime hours and consequently when this storm suddenly came on with such force as to create an emergency, it was necessary to get the sectionmen to the different points as promptly as possible.

For some time prior to December 15, 1948, Trackman Layton Holcomb had been detached from his regular section gang, D-3, and had worked with the B&B forces as a flagman. This B&B gang worked longer hours each day in order to have Saturdays off.

In calling the trackmen for overtime work, the foreman had been using the same men for cleaning snow and had not been calling Holcomb. Prior to this date Holcomb had not objected to not being called. He had no telephone whereby the foreman could reach him in emergency. If called it would have been necessary for someone to either walk to his home or drive a car, necessitating additional delay. Had Holcomb been called for this work he would have reported at the tool house at Tunnel and then be compelled to walk to Belden, a point 3.9 miles away, where a sectionman was needed for snow removal. As stated, the practice had been of long standing to call certain employes for snow removal at certain points and Holcomb had not been called. These circumstances coupled with the fact that on December 15, 1948, as on dates prior thereto, he had been detached from his section gang for special duty were, in Carrier's opinion, sufficient reasons for not calling him on this date.

With reference to Part (2) of the Employees' Statement of Claim, the Carrier is of the opinion that as Holcomb did not perform any service claim should not have been made for punitive rate.

Management affirmatively states that all matters referred to in the foregoing have been discussed with Committee and made part of the particular question in dispute.

**OPINION OF BOARD:** There are two questions brought here for consideration. The first is whether the Claimant should have been entitled to emergency overtime work as a Trackman during a period of time when he was temporarily assigned to work with a B&B crew.

The rules clearly provide that the Carrier may temporarily assign a Trackman to work with a B&B crew, as was done here, but do the rules contemplate that by so doing the employe should be deprived of a right which would be his if he had not otherwise been disturbed by a temporary transfer? We think not, under conditions such as these. Here the Claimant had completed his day of work with the B&B crew and was off duty.

That brings us to our next question which is whether the Claimant was available to perform the work in question.

We conclude that this Claimant was not available. An emergency situation existed and it was necessary for the Carrier to get men to work as quickly as possible. The Claimant lived some distance from the job and had no telephone. In order for him to have been called it would have required a great deal of time and thereby would have caused considerable delay in meeting the emergency.

**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 not violated.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 19th day of September, 1952.