

Award No. 5954
Docket No. MW-5691

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
BOSTON AND MAINE RAILROAD**

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

(1) That the Carrier violated the effective agreement dated May 15, 1942, when it failed to call Crane Operator A. A. Purdy to operate his assigned Crane on Sunday, June 5, 1949, and assigned the duties to Crane Operator Bourgault;

(2) That Crane Operator A. A. Purdy be compensated at his time and one-half rate of pay for a total of (8) hours because of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On Sunday, June 5, 1949, the Carrier planned to unload continuous welded rail at Salem Tunnel, Salem, Massachusetts. Operator Bourgault and his assigned Crane (No. W-3304) were to be used for this unloading project. Operator Bourgault's Crane developed mechanical trouble and could not be used.

Upon instructions from the Carrier, a work train went to Manchester, Massachusetts and returned to Salem Tunnel with Crane No. W-3340, which is the Crane assigned to Operator A. A. Purdy, and it was used by Operator Bourgault to unload rail at Salem Tunnel. Crane Operator A. A. Purdy was not called to operate his assigned Crane on this particular day.

A claim in behalf of Crane Operator A. A. Purdy was filed with the Carrier on June 7, 1949, for the time that he was denied the privilege of operating his assigned Crane on the above referred to work, and payment was denied.

The Agreement in effect between the Carrier and the Brotherhood dated May 15, 1942, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts. (Reprinted January 2, 1951.)

POSITION OF EMPLOYES: The Scope Rule of the effective agreement reads as follows:

"These rules govern the hours of service and working conditions of employees represented by the Brotherhood of Maintenance of Way Employees in the Engineering Department.

nothing—the claim is excessive—there is no proof Claimant was available. The claim should be denied.

All data and arguments herein contained have been presented to the Employees in conference and/or correspondence.

OPINION OF BOARD: This case is concerned with a claim of the System Committee of the Brotherhood on behalf of Crane Operator A. A. Purdy. It is contended that the respondent Carrier violated the effective Agreement when it failed to call claimant to operate his assigned crane on Sunday, June 5, 1949.

There is substantial agreement between the parties with respect to the facts. The Carrier had planned to unload rail at Salem Tunnel on the date in question. It was determined to use Crane No. W-3304, operated by Crane Operator Bourgault, to aid in this work at Salem Tunnel. The work train with the crane proceeded from Boston to the work site. Upon arrival near Salem Tunnel it was discovered that Crane W-3304 could not be used because of mechanical trouble. Thereupon the Carrier directed that Crane W-3340 tied up at Manchester for the week-end be brought to Salem Tunnel to perform the necessary work. Crane W-3340 is normally operated by Claimant A. A. Purdy who was assigned to this crane in accordance with the schedule rules.

It is petitioner's position that when it was determined to use Crane W-3340, the Carrier was obligated to call Claimant Purdy to operate the crane, rather than to use Operator Bourgault who had seniority on the disabled Crane W-3304.

The Carrier contends that an emergency existed and that there was no way of knowing whether Claimant Purdy was available for work on that Sunday. Hence, it is contended, the Carrier acted in accordance with the terms of the Agreement.

The record shows that on this Carrier crane operators hold seniority on particular cranes which are assigned to them by number. The record shows further that when the Carrier found it necessary to use Crane W-3340 on the date in question no effort was made to communicate with claimant who held seniority on that crane. The Division has held many times that in such situations the Carrier is obligated to make an effort to call the employee. The evidence shows that there was adequate time on this date to have attempted a call to claimant.

In a previous case, Award 5346, involving these same parties the Carrier argued that the assigned crane operator had first claim upon the operation of this crane.

Under the facts and circumstances revealed in the record the claim should be sustained.

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 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 Carrier violated the Agreement.

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AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of October, 1952.