

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY (Eastern Lines)**

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

- (1) The Carrier violated the effective Agreement when it failed to call Bridge and Building Helper F. F. Demoret to perform over-time service on July 28 and 29, 1951, and in lieu thereof, called a junior Bridge and Building Helper;
- (2) Bridge and Building Helper F. F. Demoret be allowed twenty-two (22) hours pay at his time and one-half rate of pay because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains a Bridge and Building Gang, identified as B. & B. Gang No. 9, under the supervision of Bridge and Building Foreman Crampton, consisting of a number of employes, among whom were Bridge and Building Helpers F. F. Demoret, R. L. Powers, and D. W. Dow.

The Bridge and Building Gang above referred to is regularly assigned to a forty-hour work week of Monday through Friday, with Saturdays and Sundays as designated rest days.

Prior to July 28, 1951, the Carrier had obtained a water pump from the Intrusion Prepakt, Inc., of Cleveland, Ohio, for use by the aforementioned B. & B. Gang in the performance of B. & B. work at or near Garnett, Kansas, under the supervision of Intrusion Prepakt, Inc., representative, Mr. C. H. Meadows.

Because of flood conditions existing on Saturday, July 28, 1951, the Carrier required an additional water pump for use in pumping water from a hole in the road bed at Mile Post 30, near Lawrence, Kansas.

The Carrier's Division Engineer contacted Mr. Meadows at Emporia, Kansas, and arranged for the use and transporting of the aforementioned pump from Garnett to Mile Post 30, near Lawrence. In carrying out this arrangement, Mr. Meadows was authorized to act as the Carrier's agent in obtaining whatever assistance necessary from the personnel of B. & B. Gang No. 9.

Since the work performed by B&B Helpers Dow and Powers, July 28 and 29, 1951, was not work normally attached to their assignments as B&B Helpers on Gang No. 9, but instead was special work in that it involved the loading, transporting and unloading of a pump belonging to the Prepakt Company, it is not considered that Mr. Meadows was under any obligation to use Santa Fe employees in connection therewith and the fact that he did, should in no way jeopardize the Carrier.

The Employees' claim for twenty-two (22) hours at the rate of time and one-half is also improper and contrary to the Board's consistent holding that the right to work is not the equivalent of work performed under the overtime and call rules, and that the payment at pro rata rate is all that is required under such circumstances. See Third Division Awards Nos. 5195, 5261, 5419, 5437, 5546, 5548, 5708, 5764 and others.

In conclusion the Carrier submits that the claim is without merit and should be denied in its entirety for the following reasons:

1. There is no rule in the Foreman's Agreement or elsewhere providing that overtime must be allotted on the basis of their relative seniority standing.
2. The claimant F. F. Demoret was not available for service in the emergency.
3. Mr. Meadows, representative of the Intrusion Prepakt Company, was under no obligation to call upon Santa Fe employees in any order, seniority or otherwise, to assist him with the loading and transporting of equipment belonging to that Company.

The Carrier is uninformed as to the arguments the Organization will advance in their ex parte submission and accordingly reserves the right to submit additional facts, evidence and argument as it may conclude are required in replying to the Organization's ex parte submission or any subsequent oral arguments or briefs placed by the Organization in this dispute.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not reproduced)

OPINION OF BOARD: During the 1951 flood, high water caused a hole in the road bed at MP 30 west of Lawrence, Kansas, on July 28, 1951 as a result of which the main line was out of service. Intrusion Prepakt Company had a representative, C. H. Meadows, supervising some intrusion prepakt work being done at Garnett, Kansas. That Company had a pump used in such work so the Carrier's Division Engineer contacted Meadows requesting permission to use the pump at MP 30. Meadows attempted to contact the foreman of the B&B gang at Garnett but could not do so. He then went to the trailer camp where claimant and other workers in the B&B gang lived. Claimant was not there. Meadows enlisted the help that was readily available to assist in loading the pump on a truck and to assist in operating it at MP 30.

Such are the essential facts of the case and considering all of the circumstances we are unable to find that claimant was available when Meadows enlisted such emergency assistance. Consequently it cannot be said that the Carrier violated its Agreement.

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

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 29th day of June, 1955.