

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Louis Yagoda, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, in lieu of calling and using B&B Foreman R. R. Booker, B&B Carpenter J. E. Middleton, B&B Helpers E. Wright, J. A. Pugh, C. Lowe, B&B Laborers C. E. Duke, I. E. Casey, Jr., and W. L. Skinner to perform repair work on the drawbridge at Chickasaw Bogue on November 9 and 10, 1958, it called and used junior B&B employees to perform said repair work.

(2) Each of the employees named in Part (1) of this claim be reimbursed for the exact amount of monetary loss suffered by reason of the violation referred to in Part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** The claimants have established and hold seniority respectively as B&B Foreman, Carpenter, Helpers and Laborers in the Bridge and Building Sub-department on the Montgomery and New Orleans Sub-Division. They were regularly assigned to a 40-hour work week, consisting of five days, eight hours each, Monday through Friday, with Saturdays and Sundays as designated rest days.

On Sunday, November 9, 1958, the Carrier called and used B&B Foreman A. H. Pope, Carpenters J. E. Palmer, E. D. Gallaway, Helpers H. G. Huggins, L. E. Casey, J. H. Bolling, Laborers J. B. Black, G. Black and L. Horton, who hold less seniority in their respective classification than the claimants, to repair the damage caused by a large freighter striking the drawbridge at Chickasaw Bogue at about 7:30 A.M., on that date. In the performance of this service, these employees worked from 10:00 A.M. on November 9 to November 10, 1958, for which they were paid at their respective time and one-half and double time rates in accordance with the Agreement rules.

Although the claimants were available, fully qualified and could have expeditiously performed the repair work assigned to the junior employees, no effort whatsoever was made to notify or call them to do so. Consequently, the subject claim was presented and progressed in the usual and customary manner on the property but was declined at all stages of the appeals procedure.

man R. R. Booker were stationed at Rigolets and had his gang been called it would have been necessary to send some of them to Rigolets to load up his working equipment.

**POSITION OF CARRIER:** At the time the bridge was struck by a large vessel, it created an extreme emergency calling for expeditious handling in order to open carrier's main line of traffic. Therefore, carrier feels that under the circumstances B&B Supervisor Williams acted properly in getting together a gang that could have their cars and work equipment at the scene of the emergency with the least possible amount of delay. To have called Foreman Booker and his gang would have resulted in several hours additional delay in getting the main line open.

Carrier feels that the gravity of the situation justified the action which was taken. Therefore, the claim of the employes is without merit and should be denied.

**OPINION OF BOARD:** On Sunday, November 9, 1958, the Carrier called and used junior B&B employes in their respective classifications to repair the damage caused by a freighter striking a drawbridge at Chickasaw Bogue at about 7:30 P.M. on that date. These employes worked from 10:00 A.M. on November 9th to 2:00 P.M. on November 10, 1958 for which they were paid at their respective time and one-half and double time rates in accordance with the effective Agreement.

It is the Claimants' position that the more senior employes were available and fully qualified and could have performed the regular work assigned to them. Consequently, since said Claimants are conceded to enjoy greater seniority in the applicable seniority district than those who were assigned and it is also conceded that no effort was made to notify or call them, violations are charged of Rules 4, 5 and 6 of the Agreement. It is demanded as correction and compliance that each of the eight employes allegedly deprived of said work be reimbursed for the amount of loss incurred by failure to perform and to be paid therefor.

The Carrier describes the situation which occurred here as an emergency requiring swift action. When the drawbridge was struck by a large freighter, it interrupted the Carrier's main line between Montgomery, Alabama and New Orleans and caused all river traffic under the bridge to be stopped. In choosing the one gang over the other, the Carrier contends that by the single and necessary criterion of speedy action, it was compelled to call the gang with less seniority. It is stated that the equipment cars of the latter (headed by Foreman Pope) were stationed at Mobile, three miles from the scene of the emergency. Foreman Booker who headed the more senior gang liked at McKenzie, Alabama and some of the other members of his gang lived at Georgiana, Alabama located about 120 miles north of Mobile. The Carrier also alleges that at the time of the accident, Foreman Booker's cars were stationed at Rigolets, Mississippi, 109 miles south of Mobile, and had his gang been called it would have been necessary to send part of it to Rigolets to load and transport the working equipment from Rigolets to the scene of the emergency, a distance of 112 miles.

As described by the Carrier, the accident occurred at 7:30 A.M.; Foreman Pope was contacted about 9:00 A.M., he and his gang started work on the damaged bridge at 10:00 A.M.

The Claimant puts the situation in entirely different time and distance terms. It alleges in the first place that when the emergency occurred, Mr. Pope was more difficult to reach than was Mr. Booker, inasmuch as the former had no phone in his home located about 5 miles from Greenville, Alabama. It is further claimed that Pope was away from home when the emergency occurred, in another county and that four hours elapsed between the time "that the first call was made to Mr. Pope and the time he was actually ready to leave for the scene of the emergency."

It is admitted by the Claimants that two members of Booker's gang lived at Georgiana, but Booker was at home at the time of the emergency and had a phone in his home. It is contended that the entire gang could have been reached and have left Georgiana within one hour after the emergency occurred and could have reached the bridge about two and one-half hours after leaving Georgiana. The Claimants particularly indict the failure of the Carrier to have made the effort to reach Foreman Booker and the men assigned to him.

Rules 4, 5 and 6 provide for assignments to be made on a seniority basis. Rule 30(f) deals specifically with overtime assignments, viz:

"The senior available men shall be given preference in the assignment of overtime work on their home sections."

As stated by us in Award 5766:

"This Board has held in numerous awards that a carrier may (as here) take any action deemed necessary to meet an emergency."

and in Award 9394, we said:

"As we understand, the Awards of this and other Divisions of the Board recognize that the Carrier in an emergency has broader latitude in naming employes than in a normal situation. In an emergency, it may assign such employes as good judgment in the situation dictates and it will not be obligated to exercise that care and thoughtfulness in its action which would under ordinary conditions be required."

See also Awards 11241, 10181, 10965 and 8199.

We do not regard as determinative in the instant matter the fact that the Carrier made no attempt to locate or communicate with the members of the more senior gang. If it was perfectly clear, as it is claimed, that Pope and his gang and his equipment could get to the bridge considerably before Booker's equipment and gang, its choice was obvious, from the point of view of the speediest treatment of the emergency.

The resolution of this central question,—of whether or not the choice of the Pope gang was obviously preferable as an emergency measure, is made impossible by the conflicting statements of the parties which appear in the record. Crucial aspects of the matter are stated differently by each of the parties and neither joins factual issue with the other by assembling supporting evidence.

The Carrier says that Pope was easy to reach by the fact that, pursuant to earlier arrangements, he phoned in at 9:00 A. M. The Claimants say that

Pope could not be reached for four hours (after the 7:30 accident) because he was in another county. This by itself flies in the face of the Carrier's statement that Pope and his gang and his equipment were on the scene at 10:00 A.M., two and one-half hours after the accident occurred and one hour after he had allegedly phoned and was notified to act. If the Carrier's statements are accurate, its judgment was correct in summoning the Pope gang, inasmuch as the Claimants themselves assert only that the Booker gang and equipment could have gotten to the bridge about three and one-half hours after the accident occurred if called promptly. This would be one hour after the time at which it is claimed the Pope gang began.

It is not possible or proper at this level of distance from the participants in the incidents to attempt to reconcile such sharp conflicts in the versions of the subject incidents as appear in the record. Since these conflicts deal with events which might have a significant bearing on our conclusions, we have no choice but to dismiss the matter for lack of evidence.

**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 claim is dismissed for lack of evidence.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.