

Award No. 13474  
Docket No. MW-13028

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

(Supplemental)

John J. McGovern, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

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

(1) The Carrier violated the agreement when it called and **used** an employee **junior** in **seniority** to Welder **L. R. Smith** for **overtime** service on December 10 and 11, 1960.

(2) Welder L. R. Smith now be **reimbursed** for the exact amount of monetary loss suffered account of the violation referred to in part (1) of **this** claim.

**EMPLOYEES' STATEMENT OF FACTS:** At about **1:20** P.M. on December 10, 1960 (a regularly **assigned** rest day) a wreck occurred **near Sawyers Mill**, Tennessee.

In connection with this **dispute**, Track Supervisor J. W. **Kizer** advised Division Engineer Nottingham as follows:

**"Bruceton**, Tennessee  
January **19th**, 1961

Mr. R. E. Nottingham.

Referring to the attached, this wreck happened about **1:20 P. M.** on the **10th**, day of December. I was the **first** railroad man at the wreck, I look it over and as there **was** a lot of twisted rail etc. **I saw** that I could use a welder, I went to my home and started to call **foreman** and men to work, **I placed a** call for Mr. L. R. Smith, **at** Parson, Tennessee. This is where he lives, and the operator said that the line **was busy**, and she **ask** me if I wanted her to place another call and **I** told her I did not have time to wait on **the call**. The Dispatcher **was** trying to get hold of me at this time, he wanted me to get back to the wreck and try to get all the people that was trying to **see** the wreck to get back out of the way **as** it was dangerous for them to be around.

The foreman and men was starting to **show up** by this time and I did not get another chance to try and place a call for Smith, **I**

We **respectfully** request that the claim be allowed.

**CARRIER'S STATEMENT OF FACTS:** On Sunday, December 10, 1961, a wreck occurred at Sawyers Mill, Tennessee. Because of a considerable amount of rail having been twisted, it **was** necessary that a welder be **dispatched** to the **scene**. Accordingly, Supervisor J. W. Kizer went to his **home** and placed a **call** for a **foreman and other** men needed to clear the wreck. He placed a call for L. R. Smith, Welder, at Parson, Tennessee, as this is where he resides. The phone operator advised that the line was busy and inquired as to whether it was desired to place the **call** later. At that time the train dispatcher **was endeavoring** to reach Supervisor Kizer to get him back to **the wreck** for the purpose of keeping onlookers away. The **foreman** and the other employees were beginning to show up and therefore, because of the urgency of the situation, it **was** necessary that **Mr. Kizer** remain at Sawyers Mill. Phone service there was out and as it was impossible for Mr. **Kizer** to leave and go to **Bruceton** to again attempt to contact Mr. Smith, he used **Mr. Smith's** helper, L. P. Noles, as welder, **as** the latter had shown up at the derailment.

**POSITION OF CARRIER:** Carrier **asserts** that in view of the urgency of the situation, it did not violate the agreement when it first failed **in an** attempt to reach Smith. Further, while it is true that Supervisor **Kizer** endeavored to reach Smith, we have been advised that the latter had not actually filed his phone number as required by the agreement. We quote from a report made to Division Engineer R. E. Nottingham by Supervisor 3. W. **Kizer, Bruceton, Tennessee, on January 10, 1961:**

"Mr. Smith **has** never filed his telephone number with **me, and** he has never ask for any work like this, I talked to him about this matter on the **12th and told him** that Mr. Noles showed **and ask** if he was needed, and I **ask** him why he did not do this when he heard about the wreck, and he said that he did not know that **a welder was** ever needed at wrecks.

"I ask Mr. Smith, a few days ago, if he knew what the agreement said and if he knew what he was supposed to do if he wanted this work and he said that he did, but he **has not** yet at this time filed his number with me and stated that he wanted the work if it happened again, I tried to comply with rule 30, but I was needed at the wreck, and could not stay in Bruceton, just to get hold **of** Smith."

In view of the foregoing carrier's position is that there has been no violation of the current agreement and the claim, therefore, **should** be denied.

**OPINION OF BOARD:** A derailment occurred on the regularly assigned rest day of the Claimant. The Track Supervisor placed a **call** to Claimant's home, and was told **by** the operator that **the line was** busy. Subsequently, **an employee** junior to Claimant **was** given the opportunity to work. We are asked to make a judgement as to whether **this action constitutes** a violation of **Rule 30 (b)**, the applicable portion of which states that a reasonable effort must be made to contact the senior **employees so** registered, before proceeding to the **next employee on** the register.

The *Carrier* defends its action by pleading that this **was an emergency** situation and secondly that Claimant himself violated the first section of **Rule 30 (b)** by not providing management with his telephone number. This latter defense **is** difficult to **understand in view** of the Supervisor's own

**statement** that he did place a call **to** the Claimant. **Admitting** that a derailment in this case was an emergency, **we** do not in deference to the **record**, think that a reasonable effort was made to contact Claimant. The **facts** militate against the defenses of the Carrier. The emergency was not of such severity that several more calls either by the Supervisor or by someone **else** in authority, could not have been made. A reasonable effort was not made. The rule was violated. We will sustain the claim.

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

Claim **sustained**.

NATIONAL RAILROAD ADJUSTMENT **BOARD**  
By Order of THIRD DIVISION

ATTEST: S. H. **Schultz**  
Executive Secretary

**Dated** at Chicago, Illinois, this 16th day of April 1966.