Award No. 13856
Docket No. MW-14602

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE WESTERN PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when, in lieu of calling and using Maintenance of Way Welder C. W. Wilkins to perform welding work on the apron at 25th Street Yard, San Francisco, from 11:00 P. M. on September 5, 1962 until 5:00 A. M. on September 6, 1962, it called and used an employe who does not hold any seniority rights to said work.

(Carrier's file "D-Case No. 7102-1962 — BMWE
Local Case No. 6899
Western Division.")

(2) Welder C. W. Wilkins be allowed six (6) hours' pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimant C. W. Wilkins has established and holds seniority rights as a welder in the Maintenance of Way Department. At the time of the subject claim he was regularly assigned as such to Welding Unit No. 4.

At about 10:30 P. M., September 5, 1962, the slip at the 25th Street Mole, San Francisco, California became damaged when a steel plate on the slip apron loosened. The Carrier called a Mechanical Department welder at 11:00 P. M. and instructed him to proceed to the 25th Street Yard for the purpose of repairing the slip apron. Said welder assembled the required tools and equipment and, at 12:30 A. M., September 6, 1962 he began the repair work which he completed at 5:00 A. M.

The work was of the nature and character that has heretofore been historically and traditionally assigned to and performed by employes holding seniority rights as Maintenance of Way Welders.

Carrier submits that under the facts present in this dispute, the Agreement between the parties was not violated when Carrier, in the exercise of reasonable discretion, did not call claimant to perform emergency repairs necessary to restore its main line to service. Claimant was not deprived of work as in no instance would he have been called to make the emergency repairs. The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: About 10:30 P. M., September 5, 1962, the slip at the 25th Street Mole, San Francisco, California, became damaged when one of the steel plates at the corner of the apron fell away and dropped into the Bay. Carrier called a Mechanical Department Welder at 11:00 P. M., who was on duty in the Motor Car Shop in Oakland, California, (10 highway miles from 25th Street Mole in San Francisco) to make repairs on the slip apron. Said welder assembled the tools and at 12:30 A. M., September 6, 1962, he began the repair work which he finished at 5:00 A. M.

The Organization claims Carrier violated the Agreement when, in lieu of calling and using the Claimant to perform the work in question, it called and used the Mechanical Department Welder who does not hold any seniority rights to said work, all in violation of Rule 1 (Scope), Rules 2, 3, 4 (Seniority) and Rule 33 (Overtime).

Rule 49 (Responding to Call) though admittedly not argued or mentioned in the record, was injected by the Labor representative upon discussion of this docket. The argument presented that this rule supports both the scope and seniority rules by providing no exceptions in the Agreement for a finding of "emergency" and further, would not be a defense for Carrier's failure to call the Claimant, who was available, under Rule 49.

Carrier contends the situation was an emergent one as Carrier's main line service between Oakland and San Francisco was interrupted and curtailed by the unforeseeable mishap, it being via a self-propelled car ferry, operating across San Francisco Bay; that without immediate repairs, delivery or forwarding of cars would be stopped, thereby making it impossible to fulfill integrated freight schedules upon the main line; that Claimant was not available and it would have been unrealistic to call him because of the excessive amount of time it would have taken him to drive a truck, 100 highway miles to the 25th Street Mole.

It is not disputed by the Carrier that the Claimant, who resides and headquarters in Sacramento (approximately 100 highway miles from 25th Street Mole) was the senior eligible employe for the work and further, that Carrier made no attempt to call him.

The question to be decided is whether an emergency existed at the time and was Claimant available for the assignment.

We are of the opinion that such an emergency did exist. The interruption of Carrier's main line service was an unforeseeable crisis of sufficient magnitude to be deemed an emergency in requiring immediate repair. Prior awards of this division have established the principle that under emergency situations, the Carrier may assign such employes as good judgment dictates. (See Awards 9394, 11241, 13626.)

Award 12938 also supports our opinion in the interpretation of Agreements that do not expressly provide for deviations in times of emergency and availability of the senior employe. It reads in part:

> "Although the Agreement does not expressly provide for deviations from the applicable Rules when emergencies are present, (as in the docket before us) we have held that under unavoidable exigencies requiring the speedy presence of an employe as an alternative to prolonged impairment of operations, that employe, (Claimant herein) even though enjoying priority of assignment under the Agreement, who clearly cannot get to the assignment in the needed time, may be regarded as not being truly 'available' in realistic terms. . . ."
> (Parenthetical references ours.)

From the record, we find no evidence that indicates Carrier did not act reasonably or use good judgment in view of the unforeseeable mishap, therefore, we find no violation of the 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 Employes involved in this dispute are respectively Carrier and Employes 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1965.