



Award No. 16095  
Docket No. MW-16396

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Nathan Engelstein, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when, on April 11, 1965, it called and used Maintenance Gang Foreman Benjamin Spicer, instead of Section Foreman Claude E. Henderson, to inspect track assigned to Section No. 156 Belvidere, Illinois.

[Carrier's file 81-1-186]

(2) Section Foreman Claude E. Henderson be allowed four and one-half (4½) hours' pay at his time and one-half rate to make him whole for the monetary loss suffered as a result of the violation referred to in Part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** Claimant Henderson is the regularly assigned section foreman on Section 156 at Belvidere, Illinois, with a work week extending from Monday through Friday (rest days are Saturdays and Sundays).

Due to a storm on Sunday, April 11, 1965, the roadmaster desired that an inspection be made of track assigned to Section 156. Instead of calling the claimant, Roadmaster McCord called and used Maintenance Gang Foreman Spicer and one member of the claimant's section crew to make the aforementioned track inspection.

The claimant was willing, qualified and available to have performed this work if the Carrier had so desired.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 1, 1961, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

**CARRIER'S STATEMENT OF FACTS:** On Sunday, April 11, 1965, at least three tornadoes struck in the immediate vicinity of the Carrier's Free-

565. Section foremen must keep a careful look-out for fires along the right-of-way, and, if possible, prevent spreading and damage or destruction of the company's or adjoining property. During dry weather no fires must be started unless there is sufficient force to keep them under control. When a fire is discovered which appears to have been started by an engine, a report should be immediately made to the nearest master mechanic, or roundhouse foreman, by wire and on postal card form 786. In every case of damage, either to the company's property or the property of others, a report must be made to the roadmaster on form 76. If property destroyed does not belong to the company, the owner should be requested to make a statement of loss on form 76-A, which must also be forwarded to the roadmaster."

These rules clearly indicate that a section foreman, in order to perform his duties properly, should live on his section. The claimant chose not to do so, and as a result on the date of claim, he apparently had no idea that there were tornadoes in the section of track assigned to him. Because of his failure to perform his duties properly, it was necessary for the roadmaster in an emergency to contact the nearest available foreman, Maintenance Gang Foreman Benjamin Spicer, who was also assigned to this territory and was familiar with it, to inspect the track. While Foreman Spicer was able to contact one of the sectionmen, it should be noted that the claimant did not leave any information with the roadmaster as to who should be notified when he was not available, as required by Rule 521.

Nevertheless, the claimant submits this claim for 4½ hours at rate and one-half on the date of claim, on account of not being called for this work.

The claim has been denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On Sunday, April 11, 1965, a storm struck in the area of Carrier's Freeport and Lake Geneva Lines. Carrier called in Maintenance Gang Foreman Benjamin Spicer to inspect track assigned to Section No. 156, Belvidere, Illinois.

Claimant Section Foreman Claude E. Henderson contends that under Rule 23½ Section (1) as the regular employe available where no relief or extra employe was available he should have been called to perform the work on that Sunday, his rest day.

Carrier counters with the argument that it did not call Mr. Henderson for this overtime work because he lived outside of the section, 45 miles away from his headquarters, and therefore was not available for this emergency work. Moreover, he did not call in to notify his immediate supervisor where he could be reached. Carrier maintains that under Section (1) of Rule 23½ it properly called upon the nearest regular available foreman, Maintenance Gang Foreman Spicer, also assigned to this territory to patrol the track.

With reference to the contention that Mr. Henderson was not available, we find that the rules of the controlling Agreement do not require that the employe reside in the territory in which he works in order to be available.

Furthermore, Rule 28 states that employes subject to call notify their immediate superior where they can be reached when they are away from home. Mr. Henderson left no such information because he did not intend to be away from home and there is no evidence that Carrier made an effort to reach him at his home. If Mr. Henderson had been called for the work, he would have traveled a distance of 21 miles further than Mr. Spicer who was given the assignment, and this additional 20 or 25 minutes of travel time cannot be regarded as the factor which made him unavailable.

Although both the Maintenance Gang Foreman and the Section Gang Foreman were assigned to the same territory, Mr. Henderson in addition was specifically assigned to Section No. 156 where the track required inspection. He, therefore, was the regular employe referred to in Rule 23½ Section (1).

Since the work to be performed was not part of any assignment and since there was no available extra or unassigned employe, Mr. Henderson, as the regular available employe, was entitled to be called for the work under the provisions of Rule 23½ Section (1).

We hold the Agreement was violated and accordingly Claimant is allowed compensation as requested in Paragraph 2 of the Claim.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1968.