

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LOUISVILLE & NASHVILLE RAILROAD COMPANY**

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

(1) The Agreement was violated when the Carrier called and used a machine operator to perform track laborer's work during over-time hours on March 18, 1967. (System file E-304-18/1-12.)

(2) Track Laborer W. P. Shanks be allowed fifteen (15) hours' pay at his time and one-half rate because of the violation referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant is regularly assigned as a track laborer to Section Gang No. 4 at Atkinson Yard. His assigned work week extends from Monday through Friday (Saturdays and Sundays are rest days).

On Saturday, March 18, 1966, a derailment occurred at Hopkinsville, Kentucky. Mr. J. L. Wiles, a regularly assigned machine operator, and others, were called and used to perform track laborer's work at the scene of the derailment. Mr. Wiles was called at 2:30 A. M. and performed track laborer's work until 5:30 P. M. that same day.

The claimant had registered his telephone number with the proper Carrier officers in accordance with Rule 30(b) and was available, willing and qualified 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 May 1, 1960, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: The events preceding the claim were as follows:

On March 18, 1967, at 12:50 A. M., freight train No. 80 derailed 13 cars near Hopkinsville, Kentucky, blocking the main line at that point.

Carrier was faced with an emergency and called those whom it felt were needed to correct the condition. At the time there was a Burro Crane located in the vicinity of the wreck and it was thought it probably would be needed. J. L. Wiles was qualified to operate the machine and he was called.

Employees alleged that the calling of Wiles violated the agreement because W. P. Shanks, who is senior to Wiles as a laborer should have been called, and filed claim for 15 hours at the overtime rate. Carrier saw no basis for the claim, and it was declined. Pertinent correspondence exchanged in connection therewith was as shown by the attached exhibits.

There is on file with this division a copy of the current working rules agreement and it, by reference, is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are not in dispute. A derailment occurred on Saturday, March 18, 1966 at Hopkinsville, Kentucky; a machine operator was called and used to perform track laborer's work for 15 hours; the machine operator was headquartered 65 miles from the derailment and the track laborer was headquartered 37 miles from the derailment; the track laborer (Claimant) had registered his phone number in compliance with Rule 30(b) and held seniority for the work that was performed. Carrier contends that at the time the machine operator was called, Carrier contemplated the use of a Burro Crane located in the vicinity. However, after calling the machine operator, but prior to the time the machine operator reported for duty, it was determined that the crane would not be used. The Carrier further determined that since the machine operator was there, they would use him for track laborer's duties, and justify this decision by citing Rule 11(e), which is:

"11(e) When the services of operators of machines are not needed on the machines, they may be required to perform other work in their respective subdepartments at their regular rate of pay."

It is the opinion of this Board that under the existing circumstances Carrier had the right to call the machine operator and utilize his services as a track laborer. However, as soon as it was ascertained by Carrier that the operation of the crane was not necessary, the track laborer should have been called and the machine operator relieved upon the arrival of the track laborer. Rules 30(b) and 30(f) are controlling in this case. They are:

"RULE 30. OVERTIME

30(b) Employees, who desire to be considered for calls under Rule 31, will provide the means by which they may be contacted by telephone, or otherwise, and will register their telephone number with their foremen or immediate supervisory officer. Of those so registered, calls will be made in seniority order as the need arises.

A reasonable effort must be made to contact the senior employee so registered, before proceeding to the next employee on the register. Except for section men living within hailing distance of either their

foreman's living quarters or their tool house or headquarters station, and for men living in camp cars when they are present at the camp cars, an employe not registered as above shall not have any claim on account of not being worked on calls.

* * * * *

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

Rule 30(b) requires Carrier to make a reasonable effort to contact the senior employe that has registered his phone number; no effort was made to comply with this rule.

In view of the fact that an emergency did exist because of the derailment, we should allow certain latitude in judgment required by the necessity of a quick decision (Award 12777). However, in view of Rules 30(b) and 30(f), Carrier should have made a reasonable effort to correct the error in judgment when the error was discovered.

For the above reasons, this Board holds that Carrier, after ascertaining that the crane would not be used, could have and should have made an attempt to call this Claimant; that the machine operator could have been utilized as a track laborer until relieved by Claimant; and that three hours would have been a reasonable time to rectify the apparent error in judgment. We therefore sustain this claim and award this Claimant 12 hours at the time and one-half rate, since the derailment occurred on Claimant's rest day.

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 by the Carrier.

AWARD

Claim sustained in the amount of 12 hours at the time and one-half rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of October 1968.

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