

Award No. 16667
Docket No. MW-17508

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)**

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

(1) The Carrier violated the Agreement when it used Extra Gang 429, instead of Extra Gang 419, to perform a preponderance of overtime work between Mile Posts 18 and 19 on December 12 and 13, 1966.

[System File No. MW-67-18]

(2) Extra Gang Foreman J. R. Peyton and Laborers T. M. Maloy, F. Avile and W. D. Portis each be allowed, in addition to payments received, seven and one-half (7½) hours' pay at their respective time and one-half rates and eleven (11) hours' pay at their respective time and one-half rates and eleven (11) hours' pay at their respective double time rates because of the violation referred to above.

EMPLOYEES' STATEMENT OF FACTS: The claimants are regularly assigned to Extra Gang 419. Their regular assigned headquarters are at Caldwell, Texas, and for the past several years they have been assigned to perform work on that district.

At 12:00 o'clock noon on Sunday, December 11, 1966, the claimants were called and used to perform work at a derailment that had occurred between Mile Posts 18 and 19 on the territory to which they had been assigned. At 3:00 P.M. on December 11, 1966, the Carrier called Junior Extra Gang Foreman Hoffman and five employes from his gang (Extra Gang 429) to augment the claimants. Extra Gang 429 is assigned to headquarters at Austin, Texas, and are customarily assigned to perform work on that district. In the performance of the work at the derailment, the Carrier assigned the junior extra gang foreman and the employes from his gang to work eighteen and one-half (18½) hours more overtime than were worked by the claimants.

The claimants were qualified, available and would have willingly performed this overtime 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, 1963, 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, December 11, 1966, a major derailment occurred on Carrier's main line between Caldwell and Hearne, Texas. Extra Gang 419, consisting of Foreman J. R. Peyton, and Laborers T. Maloy, F. Avila and W. D. Portis, headquartered at Caldwell, were called on duty at 12:00 noon, and Extra Gang 429, consisting of Foreman H. W. Hoffman, Assistant Foreman J. H. Prewitt and Laborers B. Aguilar, T. Lee, C. Sorrells and Z. C. Jones, headquartered at Austin were called on duty at 3:00 P. M. and both gangs assisted at the derailment. At 12:00 Midnight, Extra Gang 419 had been working 12 hours, while Extra Gang 429 had been working only 9 hours, therefore, Extra Gang 419 was sent in for rest. They returned to duty at 7:00 A. M. December 12, and worked until 8:30 P. M. (5 hours overtime.) They were again sent in for rest with instructions to return at 7:00 A. M.

Extra Gang 429 worked from 3:00 P. M. December 11 to 10:00 A. M. December 12, released until 4:00 P. M. for rest, then worked 4:00 P. M. December 12 until 10:00 A. M. December 13, when they were released and returned to Austin.

Claim as stated in statement of claim was filed and progressed on the property, and is now properly before this Division for decision. Correspondence in connection with the handling of the claim on the property is attached as Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are not in dispute. On Sunday, December 11, 1966, a major derailment occurred on Carrier's main line between Caldwell and Hearne, Texas. Extra Gang 419, consisting of Foreman J. R. Peyton, and Laborers T. Maloy, F. Avila and W. D. Portis, headquartered at Caldwell, were called on duty at 12:00 noon, and Extra Gang 429, consisting of Foreman H. W. Hoffman, Assistant Foreman J. H. Prewitt and Laborers B. Aguilar, T. Lee, C. Sorrells and Z. C. Jones, headquartered at Austin were called on duty at 3:00 P. M. and both gangs assisted at the derailment. At 12:00 Midnight, Extra Gang 419 was sent in for rest. They returned to duty at 7:00 A. M. December 12, and worked until 8:30 P. M. They were again sent in for rest with instructions to return at 7:00 A. M.

Extra Gang 429 worked from 3:00 P. M. December 11 to 10:00 A. M. December 12, released until 4:00 P. M. for rest, then worked 4:00 P. M. December 12 until 10:00 A. M. December 13, when they were released and returned to Austin.

The claim in this matter is based upon the Carrier's alleged failure to follow applicable rules of seniority in dividing the overtime work occasioned by the derailment described above. There is no contention that the Carrier

violated the agreement by using Extra Gang 429 in assisting at the derailment site. The violations are claimed in that the Seniority Rules were breached in the following:

1.) Extra Gang 419 should have been given more (or at least equal) overtime as opposed to Extra Gang 429 in that the derailment site was located within the assigned district of Extra Gang 419.

2.) Extra Gang 419 Foreman J. R. Peyton was senior to Extra Gang 429 Foreman H. W. Hoffman and therefor Extra Gang 419 should have had the advantage of more (or at least equal) overtime work than Extra Gang 429.

The Carrier urges that Claimant has failed to cite the violation of a specific rule respecting the application of Seniority Rules to overtime work. Carrier urges that it follows that the Claimant has therefore failed to establish his burden.

We observe the great importance of seniority in the railroad industry and that it is incumbent on this Board because of the great body of established precedents to apply such Rules whenever possible to work assignments. We cannot however apply the Seniority Rules set out in the agreement to overtime when the Agreement is silent on this point yet detailed as to so many others. We cannot infer that the parties contemplated such rights (Award 13566 and Award 13023). The fact that there has been no proof to the effect that the application of the seniority rules to overtime in situations such as the one at bar has been an accepted practice and custom on the system forecloses us from applying the rules on that basis.

Claimant's argument with respect to Rule 1 (i) of Article XI is very convincing but was not substantiated by proof. The Organization has alleged that there are assigned territories in which the respective gangs are the "regular" workers within the meaning of Article XI, Rule 1(i). The Carrier has denied the allegation. The Organization did not offer any proof on this point.

The Board further finds that in this case an emergency situation was in being at the time of the alleged violations. This is controlling. By overwhelming precedent this Board has held that in cases where an emergency situation was in being at the time of the alleged violations. This is controlling. By overwhelming precedent this Board has held that in cases where an emergency situation exists the Carrier is allowed greater latitude in judgment and "... may assign such employes as good judgement dictates during an emergency." Award 13626, Hutchins. See also Award 12299, Wolf; Award 11241, Moore; Award 11371, Dorsey; Award 13340, Miller and Award 12777, Hamilton.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October, 1968.