

Award No. 16754
Docket No. MW-17127

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, 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 Carrier violated the Agreement when, instead of calling and using Assistant Pile Driver Engineer C. W. Morgan for overtime service on July 7, 1966, it called and used a junior employe (B. L. Oldham) and employes from another seniority district for such overtime service.

(2) Assistant Pile Driver Engineer C. W. Morgan be allowed eight (8) hours' pay at his time and one-half rate and twenty-two (22) hours' pay at his double time rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On July 7, 1966, a derailment on the branch line which runs between Columbia, Tennessee and Sheffield, Oklahoma, resulted in damage to a bridge near Rockdale, Tennessee, which is on the Birmingham Seniority District. The Carrier called a B&B crew, a Pile Driver crew and other employes from the Birmingham Seniority District as well as fourteen (14) B&B employes from the Nashville Seniority District to perform the work of repairing the bridge.

The assistant pile driver engineer on the aforementioned pile driver crew has established and holds a seniority date in that rank as of April 9, 1958. The claimant has established a seniority date in the same rank as of May 15, 1956.

The claimant, who works in a B&B crew when the pile driver is not in use, assisted in loading the necessary tools and material at Boyles to be transported to the bridge and, even though he was thereby available, willing and qualified to have performed the work involved, he was not called and given the opportunity to do so.

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.

"LOUISVILLE AND NASHVILLE RAILROAD COMPANY

Office of Division Engineer

4100 Vanderbilt Road

Birmingham, Alabama

August 17, 1966

Mr. W. P. Gattis, General Chairman

BofMWE

Room 210

109 Third Avenue, North

Nashville, Tennessee

Dear Sir:

Replying to your letter August 10, 1966, file 1-16, making claim in behalf of C. W. Morgan, Assistant Pile Driver Engineer, for 8 hours at overtime rate and 22 hours at double time rate on July 7-8, 1966, account not having been called to work at a wreck at Rockdale, Tennessee, on a bridge, account of a derailment.

Your claim for Mr. Morgan is respectfully declined, as this particular work did not call for services of a Pile Driver Engineer or the Assistant Pile Driver Engineer; therefore, Rule 30 does not apply.

Very truly yours,

/s/ A. Manson

A. Manson

Division Engineer"

Subsequent correspondence was as shown by Carrier's attached Exhibits AA through EE.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 7, 1966, a derailment at Rockdale, Tennessee damaged a bridge and required closing the line. Carrier notified three Birmingham Division employees working 17 miles north including B. L. Oldham, an Assistant Pile Driver Engineer, to report to the bridge immediately. A Birmingham Division B&B gang working some 200 miles away was called to the scene, stopping at Boyles where Claimant, an assistant pile driver engineer, assisted in loading necessary tools and materials being moved to the bridge. Claimant was not called to assist in the repair work, giving rise to the instant dispute.

Organization asserts that since seniority is by district, Claimant had a right to be called for the work involved before the junior assistant pile driver engineer. As a member of the Birmingham B&B group he was also entitled to be called before the Nashville Seniority District employees. Claimant was available for assignment, his location was known to Carrier, and regardless of whether pile driver work was involved, Claimant should have been given the opportunity to work at the site of the derailment.

Carrier argues that inasmuch as Claimant is an assistant pile driver engineer and not working as a member of a B&B crew, he had no right to be called for this work as against Nashville Seniority District employees. It argues further that since the work to which the Assistant Pile Driver Engineer was called was not pile driving work but rather emergency cleanup and repair work, Carrier was authorized to pass the senior more distant Claimant.

The dispute before us involves Carrier's efforts to expedite clearing and repair of a bridge which was out of operation, interrupting passage of traffic. It is clear that this was an emergency situation.

It is clear also that Claimant was not at the time of this incident a member of the Birmingham Division B&B gang, although he had helped the gang load their equipment as they passed through Boyles. Since he was not a member of that gang he could not have been deprived of crew member work when the Carrier assigned work to a crew from a foreign seniority district. Claimant lacks standing to challenge the Carrier's assignment in this respect.

Turning to the question of whether Claimant had a prior right to be called to do the work for which Oldham was called, it is likely that a claim would lie under normal conditions when a senior employee was within reasonable proximity or when a specific skill is required. But here we have an emergency and a need for employees to clear the debris from the bridge. Carrier did not call Oldham in preference to Claimant to perform pile driving work. No pile driving work was contemplated or performed. Carrier acted reasonably in calling the nearest employees 17 miles distant. It was unreasonable to expect Carrier to refrain from commencement of work until Claimant was contacted and able to travel the 177 miles to the site of the wreck.

As this Board held in Award No. 12537 (Yagoda):

"If it was perfectly clear, as it is claimed, that Pope and his gang and equipment could get to the bridge considerably before Booker's equipment and gang, its choice was obvious, from the point of view of the speediest treatment of the emergency."

In this emergency Carrier must be held to have acted reasonably and in good faith.

"Any doubt in this regard is dissipated by the holding of this Board that greater latitude of judgment is allowed in cases of emergency." (14372, 9394.)

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 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 not violated by the Carrier.

AWARD

Claim denied.

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

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

Dated at Chicago, Illinois, this 8th day of November, 1968.