



Award No. 17111

Docket No. MW-17678

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jan Eric Cartwright, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

- (1) The Agreement was violated when, on December 11, 1966, six (6) extra gang laborers instead of Track Laborers G. C. Munguia, L. T. Hernandez, M. Mosqueda, C. Godimes and J. Garcia were called and used to repair a frog on Section 7, LaVergne, Illinois. (System file M-1200-67/15-3)
- (2) Track Laborers G. C. Munguia, L. T. Hernandez, M. Mosqueda, C. Godimes and J. Garcia each be allowed three (3) hours' pay at their overtime rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimants G. C. Munguia, L. T. Hernandez, M. Mosqueda, C. Godimes and J. Garcia are section laborers regularly assigned to Section 7 at LaVergne, Illinois. Their assigned work week extends from Monday through Friday (Saturdays and Sundays are assigned rest days).

On Sunday, December 11, 1966, the Cicero Train Dispatcher reported a broken frog on Track 2 of the LaVergne Interlocking Plant. The broken frog was within one (1) block of the claimants' assembly point and within their assigned section territory. Instead of calling the claimants, all of whom have telephones and live within three (3) and five (5) miles of their assembly point, the Carrier called and used Section Foreman McGill and six (6) extra gang laborers. Foreman McGill, whose residence is approximately two (2) miles from the claimants' assembly point, and the six (6) extra gang laborers who were camped at Clyde, approximately one (1) mile away, performed overtime service from 2:30 P.M. to 5:30 P.M.

The claimants were fully qualified, available and willing to perform this overtime work if the Carrier had called them 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.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Claimants in this case are track laborers, assigned to Section 7 with headquarters at LaVergne, Illinois. Section 7 is that portion of Carrier's track extending from MP 7.50 to MP 11.50 or from the east end of Cicero Yard to a little west of Des Plaines River between Riverside and Hollywood, Illinois.

On Sunday, December 11, 1966, an assigned rest day for claimants, Carrier officials received a report of a broken rail or frog on track No. 2 in the area of the LaVergne interlocking plant. It was necessary to expedite the renewal of this frog in order to restore service on the main line at that point. Section Foreman V. E. McGill, being the closer foreman to the broken frog, was called to take six extra gang laborers which were on duty at Clyde and renew the frog along with the use of a speed swing machine. It was not possible to leave No. 2 main line track out of service without causing train delays and the broken frog created an emergency which had to be remedied as promptly as possible.

Foreman McGill and the six extra gang laborers were engaged in repairing the broken frog from 2:30 P.M. to 5:30 P.M. on the claim date, or a total of 3 hours.

The instant claim was presented as an alleged violation of seniority rules of the agreement account claimants allegedly not being called in line with their seniority for work on their assigned territory. The claim was finally declined in Carrier's letter dated June 13, 1967 on the basis that the broken frog created an emergency and under emergency conditions the Carrier may assign such employees as good judgment dictates. The June 13, 1967 letter is attached hereto as Carrier's Exhibit No. 1.

The schedule of rules agreement, effective September 1, 1949, is on file with the Third Division and it, as well as amendments and interpretations thereto, are hereby made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants Munguia, Hernandez, Mosqueda, Godimes, and Garcia were section laborers regularly assigned to Section 7, at LaVergne, Illinois, with Monday through Friday their work week and Saturdays and Sundays as rest days.

On Sunday, December 11, 1966, a broken frog or rail on Track 2, LaVergne Interlocking Plant, within said Section 7, was reported broken. Section Foreman McGill and six Extra Gang Laborers, located at Clyde, Illinois, were called to renew the frog. This repair work took approximately 3 hours (2:30 P.M. to 5:30 P.M.) to complete.

Carrier contends that an emergency existed, thus allowing it to assign such employees as good judgment dictated.

The Organization furnished no evidence to support its claim and therefore the claim must be denied.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1969.