



Award Number 17524

Docket Number MW-17770

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES**

**THE CINCINNATI, NEW ORLEANS AND TEXAS
PACIFIC RAILWAY COMPANY**

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

- (1) The Carrier violated the Agreement when it used Supervisors Potter and Clark to perform foreman's work near Junction City, Kentucky on March 6, 1966, instead of calling and using Extra Gang Foreman C. F. Capps to perform said work. (Sys-File No. MW-25904)
- (2) Extra Gang Foreman C. F. Capps be allowed ten (10) hours' pay at his time and one-half rate because of the violation referred to above.

EMPLOYEES' STATEMENT OF FACTS: Claimant C. F. Capp was regularly assigned as an extra gang foreman with an assigned work week extending from Monday through Friday (Saturdays and Sundays are assigned rest days).

On Sunday, March 6, 1966, a derailment occurred near Junction City, Kentucky. The Carrier decided to install a switch in No. 1 track so that traffic could be detoured over the L. & N. Railroad. Foreman J. R. Martin, who was called to supervise the machine operator and five (5) laborers called and used to install the switch, was not available. The supervision of the work, which heretofore had customarily and traditionally been performed by foremen within the Track Sub-department, was then assigned to Supervisors Potter and Clark. The employees who were called performed overtime service from 8:00 A.M. until 6:00 P.M.

The claimant was available, qualified 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 August 1, 1947 together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

OPINION OF BOARD: The facts indicate that on Sunday, March 6, 1966, forty-three cars and two diesels were derailed. Consequently, it was necessary to install a switch in order to detour trains over tracks of the L & N Railroad. The Carrier attempted to contact Track Foreman Martin, but was unable to reach him. It was successful in obtaining a gang of Laborers who performed the emergency installation.

Thereafter, the Organization filed the instant claim on behalf of Extra Gang Foreman Capps, alleging a violation due to failure of the Carrier to call the Claimant.

In turn, the Carrier contends that the derailment created an emergency situation. It, further, argues that the contemplated completion time of the switch installation was scheduled for approximately 1:00 P.M. The Claimant resides approximately 180 miles from the point where the repairs were performed and he could not possibly have arrived in sufficient time to have supervised the work.

We are prepared to recognize a proper defense of emergency. It cannot be gainsaid that in the situation depicted herein, there is revealed a true emergency. Of course, where an Act of God is evident which results in a flood, snowstorm, hurricane, earthquake, fire—or in situations of strike or derailment—we are sufficiently pragmatic in adapting to extraordinary conditions created by the whims of nature.

It is our considered opinion that in the instant situation, the Carrier the right to exercise managerial judgment, as well as a degree of flexibility, within permissible limits, in order to cope with the emergency.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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. Schultzy
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October 1969.

Central Publishing Co., Indianapolis, Ind. 46206

Printed in U.S.A.