

NATIONALRAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20381
Docket Number MW-19659

John H. Dorsey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Southern Pacific Transportation 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 assigned **junior** Truck Driver Broussard to operate Heavy Duty Truck 1861 **on** Saturday, May 23 and Sunday, May 24, 1970 instead of Truck Driver J. C. **Dugas** who **oper-**ates said truck during the work week (System File MW-70-69).

(2) Truck Driver J. C. Dugae now be allowed fourteen (14) hours' pay at his time and one-half rate because of the violation referred to with- in Part (1) of this claim.

OPINION OF BOARD: Claimant, J. C. **Dugas**, and Truck Driver Broussard, on the claim dates, each held regular assignments as **Road-**way Machine Operators, Heavy Duty Trucks. As between them Claimant had the greater seniority. The regularly **assigned** work week of each of them was Monday through Friday, Saturdays and Sundays being rest days.

Immediately prior to the claim dates Claimant drove heavy duty truck No. 1861 in the performance of his duties and had done so throughout a past period beginning when Carrier put truck No. 1861 in service.

The Berwick Bay Drawbridge, Berwick, Louisiana, upon which Car- rier's mainline trains operate, was struck by a tugboat on May 19, 1970. This resulted in the main line being out of service. A damaged span had to be replaced by a new one which was fabricated in several sections at Orange, Texas; and, beginning May 22, 1970, the sections were hauled **from** Orange to Berwick on Carrier's **heavy** duty trucks. The only truck-tractor and float combination that was long enough to handle the 43 foot load on Saturday May 23, 1970, was heavy duty truck No. 1861 which was at Lafayette, Louisiana the headquarters **location** of both Claimant and Broussard.

On Saturday, May 23, 1970, Claimant drove heavy duty truck No. 1861 from 1:00 A.M. to 10:00 A.M., a total of nine (9) hours for which he was compensated at the rate of time and one-half for work performed on his rest day. Then on the **same** date Carrier instructed Broussard, at 10:00 A.M., to drive heavy duty truck No. 1861 to Orange, **Texas**, at which point he was to take aboard a section of the span and related materials, deliver **same** to

the **location** of Berwick Bay Drawbridge; and, having accomplished the delivery return to Lafayette headquarters. This he did. In the **fullfil-**
ment of his instructions Broussard worked ten (10) hours on Saturday, May 23, 1970, and four (4) hours on Sunday, May 24, 1970, for which he was compensated at the rate of time and one-half for work performed on his rest days.

The claim of Agreement violation is premised on allegations that since **Claimant** was senior to Broussard and "regularly" drove heavy duty truck No. 1861, he had a vested right to exclusive **assignment** to the operating of said **truck; ergo**, by application of Article **11 - THE 40 HOUR WEEK**, Section L(i), Carrier violated the Agreement when it instructed Broussard, instead of Claimant to the work performed by Broussard on May 23 and 24, 1970. The relied upon provision reads:

"Work on Unassigned Days: Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in **all** other cases by the regular employee."

Should **this** position be upheld Claimant would have worked nineteen **(19)** hours on Saturday May 23, 1970, and four (4) hours on Sunday, May 24, 1970.'

The defenses proffered by Carrier are: (1) the foul-up of its main Line at Berwick Bay Drawbridge created an emergency situation which in the absence of a contract bar justified it to remedy the situation, expeditiously, by assignment of **employees** and equipment in such manner as it, in the exercise of its judgment, saw fit; (2) if it had assigned Claimant to the work it would have violated ICC Order, Title 49, Transportation, Section 195.3; and, requirements demanded by the Louisiana State Police; and (3) heavy duty truck operators are not assigned to operate any specific **truck**.

Upon consideration of the Record as a whole and the arguments of the parties we find: **(1)** Claimant was assigned to and held a position of Heavy Duty Truck **Operator** but not assigned to any particular vehicle used in the performance of work within that classification; **(2)** the **Agreement** is silent as to **assignment** of work required to be performed in an emergency situation; **(3)** the foul-up of a main line is, ipso facto, an emergency situation; **(4)** Carrier was free to exercise its judgment in assignment of Heavy Duty Truck Operator **employees** and equipment to work required to remedy the emergency situation with which it was confronted to effect restoring **service** over the main Line; **(5)** these findings dispose of the merits of the Claim without necessity of our reaching the number of other issues raised in the Record made on the property.

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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:

A. W. Paulos
Executive Secretary

Dated at Chicago, **Illinois**, this 6th day of September 1974.