

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20689

Docket Number MW-20646

Robert A. Franden, Referee

(Brotherhood of Maintenance of Way Employees

PAKCES TO DISPUTE: (

(The Baltimore and Ohio Railroad Company

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

(1) The Carrier violated the Agreement when track forces from Sub-Division No. 7 were used to perform work on Sub-Division No. 6 from 6:00 PM on January 6, 1973 to 10:30 AM on January 7, 1973 and failed to call and/or refused the request of furloughed Trackmen John S. Carson and Ronald E. Drake for assignment to said work during such period (System File 2-MG-419).

(2) Claimants John S. Carson and Ronald E. Drake now be allowed 16-1/2 hours' pay at the trackman's time and one-half rate because of the aforesaid violation.

OPINION OF BOARD: On January 6, 1973 a derailment occurred at Gilmer, West Virginia which is located in seniority District Sub-Division No. 6. The claimants hold seniority in this District and were furloughed at the time of the accident.

The Carrier called the regularly assigned track forces from Sub-Division 6 to work at the derailment. The claimants appeared at the derailment site and requested that they be used. The Carrier denied the request and called the track forces from Sub-Division No. 7 who worked from 6:00 P.M. till 10:30 A.M., January 7, 1973. The claimants allege that under 24 (e-2) of the Agreement they should have been called before the track forces from Sub-Division No. 7. Rule 24 (e) quoted in pertinent part below governs the order in which forces are called.

"(e) Except for assigned overtime and incidental overtime following and continuous with a regular assignment, the procedure as outlined in paragraphs (e-1), (e-2) and (e-4) below will be followed in utilizing track forces for overtime service.

(e-2) If, after employees assigned to gangs referred to in paragraph (e-L) above are called there exists a need for additional employees, other employees on the same seniority district will be utilized.

(e-4) Supplemental Extra Gangs may be utilized in major emergencies to supplement Section and/or Extra Gangs without violating the provisions of (e-2) above."

The Carrier first argues that no rule has been cited during the handling on the property to support the claim. The record of the handling on the property is brief. The correspondence does not reflect that the Claimants ever cited a rule in support of their position. More importantly, however, the issue of the presence of a rule in the Agreement supporting the Claimants position was raised by the Carrier. In General Manager **Garda's** reply to Claimants' appeal of the denial of the claim he stated "as there is no rule in the Agreement that requires the calling of furloughed employees to perform work of the nature here involved, the claim of furloughed ~~trackmen~~ John S. Carson and Ronald E. Drake are declined."

In Award 13741 (**Dorsey**) which has been cited in many other awards of this Board we held:

'When a respondent denies a general allegation that the agreement has been violated for the given reason that it is not aware of any rule which supports the alleged violation, the **movant**, in the perfection of its case on the property, is put to supplying specifics. It is too late to supply the specifics, for the first time, in the Submission to this Board - this because: (1) it in effect raises new issues not the subject of conference on the property; and (2) it is the intent of the Act that issues in a dispute before this Board, shall have been framed by the parties in conference on the property."

The failure of Claimants to cite a rule subsequent to the issue being raised on the property is fatal. We will dismiss the claim.

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 upon the record made on the property we are unable to adjudicate the merits of the claim.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1975.