

NATIONALRAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **21445**
Docket Number **MW-21345**

Walter C. Wallace, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Denver and Rio Grande Western Railway Company

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

(1) The Agreement was **violated when**, on Sunday, August 4, 1974, employees junior to Section Laborer Dale Coombs were called and used for overtime service from **4:00 p.m.** on Sunday, August 4 to **8:00 a.m.** on Tuesday, August 6, 1974 (System File **D-10-26/MW-11-74**).

(2) Claimant Dale **Coombs** be allowed **31** hours of overtime pay because of the aforesaid violation.

OPINION OF BOARD: **The claimant** is a section laborer in a section crew headquartered at Eagle, Colorado with seniority from March 19, 1973. On Sunday, August 4, 1974 there was a **derailment** near Mile Post 126 and there was a call for **overtime** service beginning at **4:00 p.m.** that day. Claimant was not called and junior section laborers were called and used, each working overtime hours between **4:00 p.m.** on Sunday, August 4 to **8:00 a.m.** on Tuesday, August 6. Claimant maintained he was available and willing to perform such overtime and his telephone number had been filed with his section foreman. The derailment occurred on the territory of Roadmaster District Ro. 1, outside the district where claimant holds seniority.

Claimant relies upon Rule 4, the classification rule of the applicable agreement while the carrier relies upon Rule 14(b) which deals with carriers' right to augment existing forces with employees from another district to assist in emergencies such as derailments.

In our recent Award 21421, we had occasion to consider a **claim involving the same parties, the same agreement, the same rules and a similar occurrence.** There we stated:

"As we view this, Rules 4 and 14(b) combine to provide authority in the event of an **emergency** of short duration for the transfer of employee to another seniority district to alleviate **such emergency.** When these rules are examined there is no provision here which provides for the suspension of normal seniority rules. The carrier was **free** to decide not to use the Malta Section laborers, but once it decided to do so it must act in accordance with their seniority rights and in accordance with the above awards, it cannot select junior employees under their seniority roster to do this work. See Awards 6306, 7062, 5831 and 5425."

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We are of the view the same reasoning applies here and this claim **must** be sustained. With respect to the question whether the claim presented to this **Board** is the same one submitted on the property, we conclude the same period of time was involved and claimant is entitled to the overtime improperly assigned junior **employees**.

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

The **agreement was violated**.

A W A R D

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.

