

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21757
Docket Number **MW-21651**

Robert **M.** O'Brien, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(The Denver and Rio **Grande** Western Railroad Company

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

(1) The Agreement was violated when **Sectionmen** Larry Swartwout and M. Fletcher were not called and used for overtime service from 6:00 P.M. on 4-17-75 to **7:30** A.M. on 4-18-75, during which **time** junior **employees** were used for such service (System File **D-12-75/MW-7-75**).

(2) **Sectionmen** Larry Swartwout and M. Fletcher shall each be allowed **13-1/2** hours' pay at their time and one-half rates because of the aforesaid violation.

OPINION OF BOARD:- The Claimants were Section Laborers assigned to Section **#6104**. On Thursday, April 17, 1975, Track Supervisor Mike **Romero** called and used four Section Laborers assigned to Section **#6104** to perform overtime service from 6:00 P.M. to their regular starting **time** of **7:30** A.M. on Friday, April 18, 1975 due to a derailment in the vicinity of Pine Cliff. However, Claimants, who were senior to **two** of the Section Laborers called, were not called for this overtime although they were available to be used. It is the **position** of the Employees herein that the Claimants' seniority rights were violated when they were not called on April 17, 1975 to work the overtime in question. They aver that merely because Track Supervisor **Romero** did not have the Claimants' home telephone numbers, this was no excuse for not contacting them. The Employees contend that Carrier was required to make a **reasonable** effort to contact the Claimants which they failed to do in the instant case.

X- Consistent with the findings in Third Division Award Nos. 21421 and 21445, it is the opinion of this Board that once Carrier decided to use Section Laborers assigned to Section **#6104** to **perform** overtime service, Carrier was required to assign said overtime to the Laborers in Section **#6104** on the basis of their seniority. And consistent with a well enunciated principle of this Division, Carrier was further obligated to make a **reasonable effort** to contact the senior employees of Section **#6104** before granting junior employees the **overtime** opportunity.

Due to the circumstances extant in the instant claim, it is the considered opinion of this Board that when the Claimants were not called

for the overtime service on April 17, 1975 their seniority rights were **not** thereby violated. The derailment in the vicinity of Pine Cliff apparently created an emergency situation for the Carrier necessitating the use of Section Laborers on an overtime basis. As a result of this emergency, Track Supervisor Romero contacted those Laborers whose telephone numbers were in his possession. **He** did not have the Claimants' home telephone numbers. He attempted to contact **Mr. Juarez, Foreman** of Section **#6104**, but was unable to do so. **There** is no evidence in the record that Claimants had given their home telephone numbers to Supervisor Romero though they had given **them** to Mr. Juarez. **Any** responsibility for Romero not having the Claimants' home telephone numbers must rest with the Claimants who failed to give them to him, and not with the Carrier. Inasmuch as Carrier was faced with an emergency, we hold they were not required to make further efforts to contact the Claimants beyond what they did. Accordingly, the Carrier was justified under these conditions in not using the Claimants on an **overtime** basis, although they did use junior Laborers assigned to Section **#6104**.

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:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1977,