

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRDDIVISION

Award Number 22679  
Docket Number MW-22559

James F. **Scearce**, Referee

**PARTIES TO DISPUTE:** (Brotherhood of **Maintenance** of Way **Employes**  
(The Baltimore and Ohio Railroad Company

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

(1) The Agreement was violated when, on March 8 and 9, 1977, For- James R. Gartner was not called for **overtime** service on the territory assigned to his jurisdiction and responsibility (System File **NEW-1032/2-MG-1838**).

(2) As a consequence of the abwe, the Carrier shall now allow Claimant **Gartner** eight (8) hours of pay at his straight-time rate."

**OPINIOWOFBOARD:** In this case we have two (2) separate claim situations involved each of which stems from the use of a Track rather than the Foreman for **service** outside of the time of the regular tour of duty.

On March 8, 1977, at approximately **6:30 A.M.**, a **Trackman** was called to make repairs to a broken bolt which was preventing a switch from being properly aligned and was delaying the *movement* of a train. The **Trackman** so used lived less than one (1) mile from the trouble scene. Claimant lived 24 miles from the scene. **No** attempt was **made** to call the Claimant For-.

On March 9, 1977, at approximately **6:40 A.M.**, a **Trackman** who had already reported at his headquarters location, but had not yet started his tour of duty, was utilized to provide flagging protection at a grade crossing at which an "outlawed" road train was affecting the highway crossing signals. **No** attempt was made to call the Claimant Foreman.

Petitioner argues in both instances that the language of Rule 24 (e-1) which reads:

"(e-1) When wertime service is to be performed on a territory assigned to a Section Gang and an Extra Gang, the For- of the Section Gang will be given first preference. \* \* \*,"

requires that Carrier should have wade **some** attempt to contact the Foreman for the work **in** question before using the **Trackman**.

Carrier contends that in both instances an "**emergency**" **existed** and therefore Carrier was justified **in using** the **Trackman** who **was** more **readily available than was** Claimant. Carrier also **argues** that, in any went, there is **no** justification for the claims which ask for a 2 **hour** 40 minute **call**. Bather, if anything, there would **benoliability** beyond the payment of actual **time consumed inasmuch** as the **time worked was immediately** preceding and continuous with the regular assigned tour of duty of both **Claimant** and the **Trackman** who was utilized.

From the record developed in this case, it is not possible for us to determine if a bona fide emergency existed **on either** of the claim dates. **On March 8th**, Carrier elected to **call** the **Trackman** rather than the Foreman as required by **Rule 24 (e-1)**. **It is our** opinion that, even with the broad latitude given to Carrier in emergency situations (**and we are not convinced** such a situation existed **on March 8th**), **some** attempt should have been wade to contact **Claimant** on that date before **resorting to** the other **employee**. We will, therefore, sustain the claim for March 8, 1977. As for **Carrier's** contention that **only one (1)** hour is payable, we are unable to consider that **argument** because it comes to us for the first **time** in Carrier's submission to this Board.

In regard to the claim for March **9th**, the **record** indicates, without contradiction, that the **Trackman** was already on **company property** - he was not **called** for the service **in** question. Therefore, it was not necessary in that instance for Carrier to call out the Foreman **inasmuch as the Trackman was** already **on** the scene. The claim for March 9th will be denied.

**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 apprwed June 21, 1934;

That this Division of the Adjustment Board has jurisdiction wer the dispute involved herein; and

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That the Agreement was violated **on** March 8, 1977.

That the **Agreement** was not violated on March 9, 1977.

A W A R D

Claim disposed of as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1979.

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