

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22755
Docket Number MW-22850

George E. Larney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Missouri-Kansas-Texas Railroad Company

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

(1) The Carrier violated the Agreement when Messrs. E. D. Thompson, H. N. Racy, R. W. Mustain and R. L. Creekiller were not permitted to work their scheduled assigned hours (8:00 A.M. to 5:00 P.M.) on October 17, 18, 19, 20, 25 and 26, 1977 (System Files 500-78, 300-110, 100-202 and 100-161).

(2) Messrs. E. E. Thompson, H. N. Racy, R. W. Mustain and R. L. Creekiller each be allowed forty-eight (48) hours of pay at their respective straight-time rates because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: On behalf of the following four Claimants, E. D. Thompson, H. N. Racy, R. W. Mustain, and R. L. Creekiller, the Organization alleges Carrier violated the Controlling Agreement, effective February 1, 1928, with revisions to September 15, 1961, when on dates of October 17, 18, 19, 20, 25, and 26, 1977, it did not permit the Claimants to work their regularly assigned work hours.

This claim arises as a result of the following events. On or about 2:50 p.m., Saturday, October 15, 1977, Train No. 104 heading North and moving at an estimated 30 miles per hour, derailed on Carrier's main line at Centerville, Kansas, Mile Post A-70. The derailment involved the 8th through 45th cars from the engines with a majority of them overturned. As the derailment occurred on Carrier's main line, Carrier viewed the accident as an emergency requiring immediate attention and action. Accordingly, Carrier assembled several gangs, among which was the Bridge and Building Gang No. 726 to which the Claimants were assigned, to perform the necessary work in clearing the derailed cars. In so assigning this work, it was, Carrier contends, necessary to reschedule the Claimants' regularly assigned work hours for the duration of the emergency which covered the dates of October 17 through the 26th, 1977, and involved a total of six (6) work days for the Claimants.

The Organization takes the position that Carrier violated Article 8 Section 7 of the Controlling Agreement, with reference to Hours of Service, by having suspended Claimants' regular work period without giving the contractually required twenty-four (24) hour notice when it required the Claimants to perform work in connection with the aforementioned derailment. Article 8, Section 7 reads in relevant part as follows:

Rule 7. "The starting time of the work performed for regular assigned service shall be designated by the supervisory officer and shall not be changed without first giving the employees affected twenty-four (24) hours' notice. ..."

In addition, the Organization argues, another aspect of the violation involves Carrier not allowing Claimants to work their regular assignment by having them work on the derailment, a temporary service assignment, during overtime hours. In support of this argument, the Organization cites Third Division Award 8033 as being on point with the instant case. In Award 8033, Carrier was found to have violated the Agreement when it suspended work to absorb overtime. Therefore, the Organization maintains, Claimants are entitled to receive additional compensation in the amount of eight (8) hours at the straight-time rate for each of the aforesaid dates in question.

Upon a thorough review and examination of the record, it is the opinion of the Board that the derailment which caused the temporary reassignment of the Claimants, meets, in all respects the accepted definition of an emergency as set forth in Third Division Award No. 10965: "An unforeseen combination of circumstances which calls for immediate action." In so finding, we reiterate our position set forth by Referee Irwin M. Lieberman in Third Division Award No. 20527:

"In this Division and in the other Divisions of the Board it is well established that the Carrier, in an emergency, has broader latitude in assigning work than under normal circumstances; in an emergency Carrier may assign such employees as its judgment indicates are required and it is not compelled to follow normal Agreement procedures. ..."

Based on the foregoing, we rule the instant claim to be without merit.

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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.