

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number 22948**
Docket **Number MW-22971**

Martin F. **Scheinman**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Agreement was violated when **Trackman J. L. Gilpin** was not called to perform overtime service on his assigned section territory (Section **33-Garnett**) on September 14, 1977 and the Carrier instead called and used a **trackman** assigned to the Ottawa Section for such service (System File **4-0-53-4/11-1580-220-143**).

(2) **Trackman J. L. Gilpin** be allowed two (2) hours and forty (40) minutes of pay at his time and one-half rate because of the **violation** referred to in Part (1) hereof."

OPINION OF BOARD: On September 14, 1977, a derailment occurred at a public road crossing at Princeton, Kansas. As a result, a **Trackman** was needed to inspect and **make** necessary repairs at the derailment. Since the derailment was within the working **limits** of Section 33, **Garnett, Kansas**, the Chief Dispatcher attempted to contact the Foreman of this section. The Chief Dispatcher was advised that the regularly assigned Foreman was on vacation. He then attempted to contact the Relief Foreman; but he was also unavailable. Section Foreman Houdashelt at Ottawa, **Kansas** was then called to handle the **assignment**. Houdashelt called one of his own **Trackmen** to inspect and **make** the repairs at the derailment.

The Organization contends that Claimant **J. L. Gilpin**, a **trackman** assigned to Section **Gang #33**, should have been called to perform the overtime services since the disputed work is within the assigned working limits of Section **Gang #33**. The Organization argues that the work belonged to Claimant who was available and fully qualified to perform the work pursuant to Article II, Establishment of Seniority.

After careful **analysis** of the evidence introduced on the property as well as the **submissions** to this Board, we conclude that Carrier's **contentions** are **more** convincing. The claim **must** be denied.

It is clear that the work in question needed to be handled quickly. The situation can best be described as **urgent**. Carrier attempted to contact the Section Foreman as was required. When the Chief Dispatcher found the Foreman **on** vacation he sought the relief Foreman. This attempt to locate the appropriate foreman was also **unsuccessful**.

Section **Foreman Houdashelt** was then called to handle the situation. Houdashelt, faced with the need for an immediate response understandably reached for a familiar **man** - one of his **own trackman**. In this way he assured a prompt response to the urgent situation he found **himself** confronted with.

There is absolutely no evidence to indicate that Houdashelt knew or could have reasonably known that Claimant should have been called. Houdashelt did not have **Claimant's name** or phone number.

In short, on the facts presented here, a unique and urgent situation - we **must** conclude **that** Carrier did not violate the Agreement when it failed to call Claimant to perform the work.

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 15th day of August 1980.