

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23460
Docket Number **MW-23033**

Martin F. **Scheinman**, Referee

PARTIES TO DISPUTE: (Brotherhood of **Maintenance** of way Employes
(Missouri Pacific Railroad Company
((Former Chicago and Eastern Illinois Railroad **Co.**)

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

(1) The Agreement was violated when Assistant Foreman L. D. Riley and **Laborers** B. L. Watts and G. C. Dodson were not called and used to perform overtime service **on** their assigned territory on January 22, **1978** and the Carrier instead called and used the members of **Section** Gang **#5750** for such service (System File S **214-100**).

(2) Messrs. Riley, Watts and Dodson each be allowed four and **one-half** (**4-1/2**) hours of pay at their respective time and one-half rates because of the **violation** referred to in Part (1) hereof."

OPINION OF BOARD: On Sunday, January 22, **1978**, a broken rail was reported at Mile Post 267, Pole 38, **approximately** eight (8) miles north of Mt. Vernon, Illinois. Section Gang 5750, headquartered at Salem, **Illinois**, was called to perform **overtime** service repairing the rail. The **work** was completed in four and one-half (**4 1/2**) hours.

Claimants, Assistant Foreman L. D. Riley and **Laborers** B. L. Watts and G. C. Dodson, comprise Section Gang 5751, which is headquartered at Mt. Vernon, Illinois. Their workweek runs from Monday through Friday and their rest days are Saturday and Sunday. Claimants' claim that Carrier's failure to call in Gang 5751 to repair the broken rail violates Rule 10 (c) of the Agreement. They ask for four and one-half (**4 1/2**) hours pay at one and one-half (1 1/2) times their respective rates to remedy the alleged violation.

Rule **10(c)** states:

"Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have **40** hours of **work** that week; in all other cases by the regular employee."

The Organization contends that the **section** of broken track is regularly assigned to Gang 5751. Therefore, it asserts that Claimants were entitled to the work pursuant to Rule 10 (c). The Organization also contends that the broken rail was not an emergency condition which might justify calling in an **unassigned** gang and that, even if it was, Claimants' Gang could respond more **rapidly** than Gang 5750.

Carrier, on the other hand, contends that Rule 10 (c) was not operative since the broken rail was an emergency condition. It asserts that in an emergency condition, it **may** assign the gang which can respond the **most** quickly, and that Gang 5750 was in that position. Carrier argues that the Organization did not challenge its contention that this was an emergency condition when the case was handled on the property and, thus, may not do so here. Finally, Carrier asserts that even if Rule 10 (c) was applicable, that Claimants' Gang 5751 was not exclusively assigned to the area of the broken rail. Rather, it insists that the area was shared by Gangs 5750 and 5751.

The critical issue before us is whether or not the work **performed** by Gang 5750 on the date in question was in an area of track regularly assigned to Gang 5751 and not to Gang **5750**. If this question is resolved in the negative, then **we** need not consider whether an emergency condition was in existence.

On the property, Carrier denied the claim on July **25**, 1978, stating:

"A broken rail **was** discovered on the **main** line between Salem and **Mt. Vernon, Illinois**. Gang **5750**, which **also** works on this territory, was called because it could respond more quickly than Gang **5751**." (**emphasis** supplied).

The Organization did not dispute Carrier's statement. Carrier argued that "Both gangs **perform maintenance** work on this section of track. If this situation had occurred during regular **working** hours, the gang that could respond sore quickly would have been **utilized**."

While it is true that Gang 5751, headquartered at Mt. Vernon, was closer to the area of track where the broken rail **was** discovered than Gang 5750, the fact remains, that Carrier's assertion that work on that area was not regularly assigned to Gang 5751 stands unrefuted. That is, **there is no credible** evidence that Gang **5751 was** entitled to perform **ie** work.

Since Gang 5751 was not regularly assigned to the area of track in question, Rule 10 (c) is not applicable, even assuming that no **emergency** condition existed. Therefore, it was in Carrier's discretion to assign the work to the gang which could respond to the broken rail **most** rapidly, which, on the date in question, was undisputably Gang 5750.

In view of the foregoing, the claim will be denied in its entirety.

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 8th day of **December** 1981.