NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23853
Docket Number MW-23250

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Seaboard Coast Line Railroad Company

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

(1) The Agreement was violated when, on November 19, 20, 26 and 27, 1977, an employe junior to Trackman K. R. Pegues was used to perform overtime service on Section Force 8031 (System File C-4(36)-KP/12-6(78-24)J)

(2) Trackman K. R. Pegues shall be allowed thirty-six and one-half (36-1/2) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: Claimant, Trackman K. R. Pegues, was regularly assigned to Section Force 8031 at Monroe, North Carolina. This is approximately seventy miles from his residence. During the period of the claim, Claimant was permitted by Carrier to work on Section 8030 which was located at Lilesville, North Carolina because of the work load on Section 8030 and because Section 8030 was located closer to Claimant's residence. This was approximately 33 miles from his home.

On November 19, 20, 26 and 27, 1977 Carrier used employes who were junior to Claimant, and who were not regularly assigned to Section Force 8031, to perform overtime service. The Organization asserts that Claimant was available and willing to perform the overtime work. Therefore, it asserts that Carrier violated Rule 28, Work on Unassigned Days.

Carrier, on the other hand, insists that Claimant was not entitled to the work account he had never worked on Section 8031. For this reason, it asserts that the Section Foreman of Force 8031 was never advised of Claimant's telephone number or of any way to contact Claimant.

Carrier argues that on three of the claimed dates, November 20, 26 and 27, an emergency situation existed because of broken rails. Faced with the emergency situation, Carrier called the closest available employe.

Further, Carrier asserts that the Foreman of Section 8031 understood that Claimant was employed by an independent railroad contractor on the dates in question. Therefore, the Foreman determined that Claimant was not available.

Work on unassigned days is covered by Rule 28. it 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 not otherwise have 40 hours of work that week; in all other cases by the regular employe."

A reading of this provision leaves little doubt that Claimant had a right to be called for the work. He was regularly assigned to Section Force 8031. The work to be performed was the regular work of that gang.

The fact that Claimant did not actually work on that Section is of no moment. After all, nothing intine plain language of Rule 28makes the assignment of work dependent upon where the employe was working. instead, it turns on an employe's assignment. If the parties intended such an interpretation they would have so indicated. They did not.

Thus, Claimant, the regular assigned employe on Force 8030 was entitled to be called.

Carrier argued that Claimant was not available to perform the work. This contention is without merit.

We have consistently held that a carrier must make a reasonable effort to contact an employe. See Awards 16279and 20119. Normally we have required more than single attempt to contact the employe. (Award 22966). Here, the Foreman did not attempt a single call. We are simply not persuaded that a reasonable effort was made to obtain Claimant's number and to contact him. (See Award 22014).

Carrier's argument that the Foreman "understood" that the Claimant was employed by an independent contractor at the time is also unpersuasive. There is no evidence to support the Foreman's belief. In fact, the record indicates that Claimant was available for the days in question. As such, we must conclude that Claimant was available.

As far as the claimed dates, we see no reason why Claimant was not called on November 19th. The only work performed was ten (10) hours of unloading ballast. Under no reasonable interpretation can this be viewed as emergency work. The work was scheduled in advance. Thus, the time it tight have taken Claimant to travel to the location is irrelevant.

As to the other claimed dates, we not, that part of the work on November 26th was spent unloading ballast. For this period of time, the same rationale underlying our reasoning regarding November 19 applies.

The work performed on November 20 and 27 was repairing broken rails. Fart of the time on November 26th was also spent repairing rails.

Carrier argued that the work was emergency in nature, requiring that it call the closest available employe. We must conclude that an analysis of these particular facts indicates that Carrier could not disregard the seniorityprinciples of theAgreement.

First, the evidence presented is insufficient to carry Carrier's burden of establishing that an emergency situationexisted at all. There is nothing to suggest the location or significance of the broken rail. Clearly a broken rail, in itself, does not constitute an emergency. See Award 20310.

Second, we note that Carrier called in other employes from great distances to perform the work. For example, Trackman J. W. Robinson, who was regularly assigned to Section Force 8030, was called in even though he lived 55miles from Monroe. We simply are not convinced that circumstances presented warrants calling in a man from a different gang when both had to travel such great distances. Stated simply, we are not persuaded that Carrier has met its burden of showing that it had sufficient basis for disregarding the principles of Rule 28.

For all of the foregoing, we will sutain the claim as presented.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
R emarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April 1982.


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