

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23913  
Docket Number MW-23365

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(Missouri Pacific Railroad Company)

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

(1) The Agreement was violated when Section For- P. G. Lopez, **Trackman** Driver J. O. Benavides and **Trackmen** T. w. Neal and R. Parker were not called to perform **overtime** service on their assigned section territory (Section **5614-Baird**) on February 19, 1978 and the Carrier instead called and used the **Sweetwater** Section Gang (Carrier's File S 310-266).

(2) The claimants each be allowed five (5) hours of pay at their respective **time** and one-half rates because of the **violation** referred to in Part (1) hereof."

OPINION OF BOARD: The **Claimants are regularly** assigned to Section Gang **5614** (Baird, Texas) and they work Mondays through Fridays. On Sunday February 19, 1978, Carrier used Gang 5616 (Sweetwater, Texas) to perform 5 hours of **overtime work** on a defective frog. The Employees contend that the work was **performed** within the Claimants -assigned territory.

The Organization relies upon the "Work on Unassigned Days" Rule (**14**, 1 (j) because the work in question was not part of any **assignment**.

In the first two declinations, Carrier asserted that **it called** the crew closest to the damaged rail, but then, it stated (on the property) that "emergency conditions" existed and it recited certain "unsuccessful attempts" to contact others. In **November 27, 1979** correspondence, certain conference discussions were confirmed, to the effect that **two** trains were delayed and that Carrier could not reach Claimants. The **November 27, 1979** letter concluded by stating that the matter "... would be held for further discussion at a later conference". On December **14, 1979** the Employees requested a ninety (90) day extension and on December 27, 1979 Carrier agreed to the extension "... for further conference . . . and further handling . . ."

Thereafter, without further development of the case, it was submitted here cm January **14, 1980**.

There is some debate as to the jurisdiction of this Board because of the Employees' hasty submission. But we do not feel it necessary to **explore** that question at length. The Employees asserted certain facts in support of a claim. Thereafter, Carrier raised at least one item (unavailability) which, if established, would bar the claim. The Claimants did not submit contrary factual rebuttal while the matter was still under review **on** the property and thus, the claim must be dismissed for failure of proof.

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

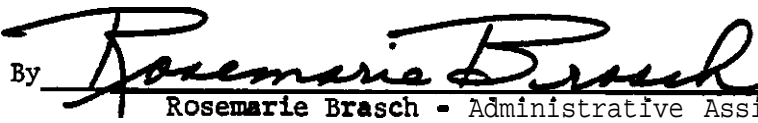
That the claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD **ADJUSTMENT** BOARD  
By **Order** of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of June 1982.