

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24584
Docket Number MW-24407

Herbert L. Marx, Jr., Referee

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

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

(1) The Agreement was violated when Section Foreman R. W. McAllister and **Trackmen** L. Jackson and R. Hill were not called to perform overtime service on their assigned section territory on December 14, 1979 and the Carrier instead called and used Section Force 8120 [System File C-4(36)-RWM/12-27(80-39) G].

(2) Because of the aforesaid violation, each of the claimants shall be allowed pay at their respective time and one-half rates for an equal proportionate share of the 36.25 man-hours expended by Section Force 8120.

OPINION OF BOARD: The Carrier was notified by the Coastal Lumber Company that there was a derailment on the company's tracks and that the Carrier's assistance was requested to remedy the situation. This was after the regularly assigned working hours of Carrier's **crews** capable of performing the work.

The Carrier assigned what it considered the "**nearest** available force", Section Force 8120, to perform the **rerailing**. This is a claim on behalf of Section Force 8122, which the Organization argues should have been called for the work. There is no dispute to the Organization's contention that the location of the derailment is "**work** territory regularly assigned to Section Force 8122".

The Carrier defends its position on the basis that the work was performed on tracks owned and operated by the outside company and that such company could have used any force it wished for the task. While this alternative was indeed open to the company, it nevertheless chose to request the Carrier's help. Upon accepting the request, the Carrier then was obliged to assign the work according to existing seniority rules.

The Carrier **also** argues that **the** matter was an "emergency" and that it was thus entitled to the latitude of using the force closest to the scene which could presumably perform the work most expediently. The Board does not accept this argument under the particular circumstances. The fact that the foreman assigned to Section Force 8122 lived 35 miles from his Section headquarters does not appear to preclude the possibility that he could have been called without undue **delay**. While, from the company's viewpoint, the matter of restoring its tracks was an urgent one, there is no showing that calling Section Force 8122 would not have met the requirements of the situation.

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 **Employee** 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

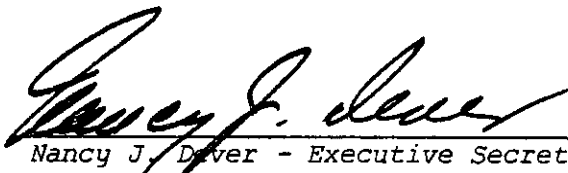
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 15th day of December 1983.