

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24662
Docket Number MW-24706

Edward L. Suntrup, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

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

(1) The Agreement was violated when the Carrier used Track Department forces from the Coxton Seniority District to perform work on the Sayre Seniority District on January 17 and 18, 1980 (System Dockets LV-195 and LV-196).

(2) Furloughed Curve Liner T. Werkheiser, Foreman L. Daugherty, Truck Driver W. Wheeler and Trackman K. Porter each be allowed sixteen (16) hours of pay at their respective straight time rates because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: The record before the Board shows two (2) different and distinct claims handled on property which are herein treated under one (1) Docket number. These claims must be discussed and ruled upon as separate from the point of view of substantial evidence proffered by the moving party.

By letter dated February 9, 1981 T. Werkheiser, a furloughed Curve Liner, submitted a claim to the Carrier for two (2) days pay at straight time rate. It was the contention of the Claimant that he held seniority on Sayre Seniority District No. 4 on January 17 and 18, 1980 when the Carrier used another employee who did not hold seniority in this district to line throw-over at Mile Post 249.7. During the progression of this claim on property the Carrier did not deny that Claimant held seniority in Sayre District No. 4. Rather, the Carrier pled justification for not using Mr. Werkheiser on the grounds that an emergency "track condition (existed which) required immediate attention in order to prevent delays to trains or even the possibility of a derailment". While the Board finds such argument persuasive with respect to Carrier action on January 17, 1980 it does not do so with respect to the second day in question since, as the Organization stated on property, the work itself done on these two (2) days were of a non-continuous nature. The Carrier did not rebut this contention. Further, since the Claimant lived only some twenty-three (23) miles from the point where the required work needed to be done, according to information provided by the Organization on property, also not denied by the Carrier, the Claimant could have been called to work at Mile Post 249.7 on the day of January 18, 1980. The Board rules, therefore, that the Claimant be paid eight (8) hours straight pay for this day only.

By letters dated February 9, 1980 Claimants L. Daugherty, K. Porter and W. Wheeler all filed claims for sixteen (16) hours straight time pay each for work which had been performed by others on January 17 and 18, 1980 at Carrier Mile Post 249.7. The contention of each of the Claimants was that the work performed that day at the point in question was done by employees who were working in the Seniority District in which the Claimants held prior rights. The response of the Carrier in all instances was that "(b)ecause of the emergency nature of this work (which was performed on the claimed dates) there was no time to recall furloughed employees under the provisions of...the Scheduled Agreement".

The weight of evidence for any claim is the responsibility of the moving party. A review of the record shows that, contrary to the evidence presented in the case of Claimant T. Werkheiser discussed and ruled upon in the foregoing, there is nothing herein which was presented by the Organization on property to rebut and/or to show Carrier's alleged error when exception was taken by the Carrier to the recall of Claimants Daugherty, Porter and Wheeler because of Carrier contention that an emergency condition existed. These claim(s) must, therefore, be denied.

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

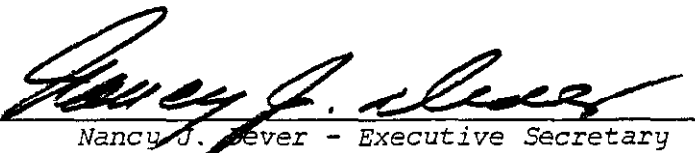
That the Agreement was violated.

A W A R D

Claim sustained for Claimant T. Werkheiser for January 18, 1980 only.
All other claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Sever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1984