

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26677

Docket Number MW-26304

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company (Eastern Lines)

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

1. The Carrier violated the Agreement when it assigned outside forces to transport track material from Houston, Texas to a derailment at Schriever, Louisiana on February 6 and 7, 1984 (System File MW-84-50/414-92-A).

2. The Carrier also violated Article 36 of the Agreement when it did not give the General Chairman advance notice of its intention to contract said work.

3. As a consequence of the aforesaid violations, Heavy Duty Truck Drivers F. A. Hasty, R. D. Sanchez, J. E. Hasty, H. R. Brittingham, J. P. Castro, J. C. Dugas, M. E. Hanks, F. Broussard, D. E. Flurry, R. W. Chester, J. R. Smith, D. D. Baker, G. G. Reyes and B. L. Firasek shall each be allowed an equal proportionate share of the man-hours expended by outside forces performing the work referred to in Part (1) hereof."

OPINION OF BOARD: On February 6, 1984, a derailment occurred at Schriever, Louisiana, causing severe damage to the main track and an interruption in service. The main track was out of service on February 6 and 7, 1984. For purposes of repairing the damaged track, Carrier contracted with outside forces to haul paneled track and switches from Houston to Schriever, triggering the Claim herein. Claimants were all heavy duty Truck Drivers qualified to perform the work involved. On the two days of the activity to repair the track all Claimants were either being used to haul material to the site of the derailment or were otherwise fully employed.

The Organization argues that the outside forces should not have been called until Carrier exhausted the roster of available employees covered by the Agreement. Further, it is maintained that Carrier was obligated by Rule 36 to give fifteen days notice of its intent to contract out work. Even recognizing the fact of an emergency, the Organization insists that Claimants had the right to the work, on an overtime basis if necessary, prior to the utilization of outside forces.

Carrier avers that clearly an emergency existed on the two days involved herein. Under the circumstances, Carrier insists that it had great latitude in dealing with the crisis and acted appropriately. Additionally, Carrier notes that it would have been patently impossible to give the fifteen days notice specified in Article 36 under the circumstances of this emergency situation. Carrier also states that it used five of the Claimants to do the work of hauling material to the site of the derailment.

It is clearly acknowledged that the circumstances in this dispute involved an emergency. This Board has held that in an emergency Carrier may take whatever action it deems appropriate to cope with its problems; see Third Division Awards 13316, 12777, 15597 and many similar holdings. It is also apparent that the provisions of Article 36 are inapplicable under the circumstances and were not violated by Carrier in this dispute. The Claim must 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 Employee 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

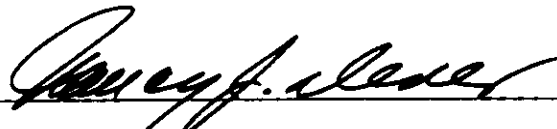
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.