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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28065
Docket No. MW-26609
89-3-85-3-357

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Delaware and Hudson Railway Company

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

(1) The Carrier violated the Agreement when, on January 17 and 18, 1984, it assigned Pennsylvania Subdivision Gangs T-43 and T-44 (Kingsley Gangs) to perform track repair work at East Binghamton Yard on the Susquehanna Subdivision instead of recalling and assigning furloughed Susquehanna Subdivision employes [BMWE Group Claim #5.84/012.22 (1st S-D)].

(2) As a consequence of the aforesaid violation, Susquehanna Subdivision Employes T. Clapper, E. Knapp, M. Gardner, J. Reightmeyer, A. Collins, J. Ippolito, V. Miner, III, E. Jones and W. Hurley shall each be allowed eight (8) hours pay at their respective pro rata rates and ten and one-half (10 1/2) hours pay at their respective time and one-half rates."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the time of this claim the Claimants held seniority as Trackmen on the Carrier's Susquehanna Sub-Division. They were on furlough. In January, 1984, there was a derailment at the Carrier's East Binghamton Yard in Conklin, New York. As a result of this the Carrier used regular forces from a seniority district different from that in which the East Binghamton Yard is located rather than recall the Claimants. A claim was filed by the Organization on grounds that the Carrier was in violation of Rule 3 of the Agreement because it used forces from the wrong seniority district to do repairs after the derailment.

The Rules at bar in this case are the following:

"Rule 3

(a) Seniority rights of employees, except as provided in (b) and (c), are confined to the sub-department and class in which employed and to the sub-division on which they are located as herein defined.

Track Department:
Pennsylvania Sub-division
Susquehanna Sub-division
Saratoga Sub-division
Champlain Sub-division

Bridge and Building Department:
Pennsylvania Sub-division
Susquehanna Sub-division
Saratoga Sub-division
Champlain Sub-division

(b) Seniority rights of trackmen and laborers will be restricted to their respective gangs, except that, when forces are reduced, they may exercise displacement on their seniority sub-division.

(c) Seniority rights of steel bridge men and equipment operators as such, shall extend over the entire system.

Rule 42(1)

The carrier shall have the right to use furloughed employees to perform extra work, and relief work on regular positions during absence of regular occupants, provided such employees have signified in the manner provided in paragraph 2 hereof their desire to be so used. This provision is not intended to supersede rules or practices which permit employees to place themselves on vacancies on preferred positions in their seniority districts, it being understood, under these circumstances, that the furloughed employee will be used, if the vacancy is filled, on the last position that is to be filled. This does not supersede rules that require the filling of temporary vacancies. It is also understood that management retains the right to use the regular employee, under pertinent rules of the agreement, rather than call a furloughed employee."

The Carrier denied the claim on grounds that an emergency existed which permitted it to go to the "...nearest available gangs" until management determined that the emergency ceased. On appeal, however, the District Chairman argued as follows:

"...(When) the recent derailment in Binghamton ...occurred the Carrier used...a method (of) calling men (which) was not consistent with the way it has been established in the past. (Both) past practice and tradition has been to utilize all gangs within the sub-divisions, call furloughed men, and then call gangs from other sub-divisions...."

The Organization underlines that if the Carrier's reasoning was correct it ought to have called gangs from other districts than the Pennsylvania Sub-division who could have been at the point of derailment "...in less than two (2) hours." But the Carrier did not do so. The Organization also argues that the historically established definition of an "emergency" is that such ceases when a train is able to pass a point of derailment, as opposed to the definition given by the Carrier as noted in the foregoing. The Organization also offers, for the record, statements by various members of the craft attesting to the historical application of Rule 3 under circumstances parallel to those outlined in this case.

Review of the record, including the language of Rule 3, and historical precedent dealing with its application, persuades the Board that the Carrier was in violation of Rule 3 when it assigned the two Pennsylvania gangs (T-43 and 44) to work on the East Binghamton Yard derailment in lieu of calling the furloughed Claimants from the Susquehanna Sub-division. The Carrier's defense based on Rule 42(1) which deals with extra work is insufficient to nullify application of Rule 3 to the instant circumstances. The importance of "point seniority" has been underscored by the Board in the past and the instant Award but reaffirms this precedent (See Third Division Awards 4076, 4667, 11752 inter alia). Awards from the Board have occasionally denied claims such as the instant one on grounds that the work done by craft members from the wrong seniority district was incidental or de minimus (See Second Division Awards 10794 through 10800, 10938, 11083, 11085). The record before the Board in this case rules out such conclusions.

Appropriate relief is pro rata rate at sixteen (16) hours for January 17 and 18, 1984, and two and one half (2 1/2) hours at overtime rate for January 17, 1984.

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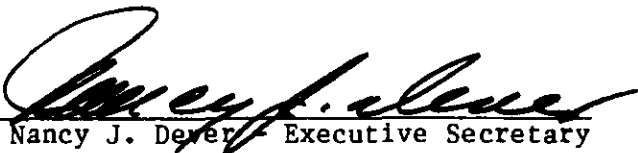
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A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of August 1989.