

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company (former St.
(Louis-San Francisco Railway Company)

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

(1) The Carrier violated the Agreement when, on October 5, 6 and 9, 1986, it assigned Seniority District No. 4 employees to perform track repair work between Mile Post 432 and 433 on Seniority District No. 5 instead of recalling and assigning Seniority District No. 5 Trackman H. D. Bennett, P. C. Kirk, J. L. Casey, Jr. and J. B. Stratton (System File B-2332-1/EMWC 87-1-5B).

(2) As a consequence of the aforesaid violation, Claimants H. D. Bennett, P. C. Kirk, J. L. Casey, Jr. and J. B. Stratton shall each be allowed pay at the trackman's rate for an equal proportionate share of the ninety-seven (97) straight time hours and one hundred seventy-five and one-half (175 1/2) time and one-half hours expended by the Seniority District No. 4 employees working on Seniority District No. 5."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

On October 4, 1986, track between M.P. 432 and M.P. 433 on Seniority District No. 5 was washed out as a result of the Army Corps of Engineers' opening of the gates of a dam at Keystone Lake. The water covered the rail for at least 24 hours. On October 5, 6 and 9, 1986, the Carrier utilized employees from Seniority District No. 4 to repair the track rather than Claimants, who were in Seniority District No. 5 on furloughed status.

The Carrier argues that an emergency situation existed dictating use of employees from Seniority District No. 4 rather than Claimants. But the record shows that the Carrier was aware on October 4, 1986, that the track was under water as a result of the flood. It is fair to conclude that the Carrier was further aware on October 4, 1986, that track damage from that flooding was a distinct possibility. Repairs did not begin until one day later after the water receded. Given that length of time until the repairs could be commenced and further given the fact that the record fails to indicate whether the Carrier even attempted to call Claimants, we cannot conclude that the situation was of such an emergency that the Carrier was entitled to utilize employees from another seniority district to accomplish the repairs.

The Carrier's argument that under the governing rules Claimants had a number of days to report which would not have permitted the Carrier to timely complete the repairs is not persuasive. Again, the record does not demonstrate that Claimants were even called and that delays in their reporting were evident.

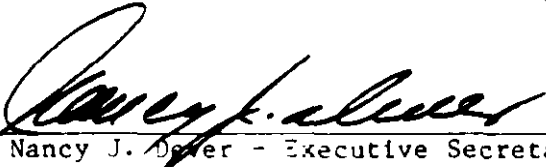
With respect to the remedy, Claimants shall be compensated for the number of hours they would have worked had the Carrier called them to work for the repairs. Overtime, if any, shall be in accord with the Agreement based upon the number of hours Claimants would have worked if called.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1992.