

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31074
Docket No. MW-30634
95-3-92-3-413

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

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

- (1) The Agreement was violated when the Carrier assigned Trackman V. Pallazzo to perform vehicle operator's work (operate a boom truck) to change a rail on the River Line on November 6 and 7, 1990 (System Docket MW-1818).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Vaughan shall be allowed eight and one-half (8 1/2) hours' pay at the vehicle operator's time and one-half rate."

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 employee 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.

The instant claim arose when, on November 6, 1990, the Carrier assigned Trackman Pallazzo "to perform overtime service as operator of the boom truck to change out a broken rail on the River Line at Haverstraw, New York." The Organization argued that Mr. Pallazzo "customarily performed trackman's duties throughout his workweek", whereas the Claimant "customarily performed vehicle operator's duties as a boom truck operator throughout his workweek". Furthermore, the Organization contends that the Claimant was available and qualified to perform all the overtime work required.

The Carrier denied the claim on the grounds that this was an emergency situation because the rail that had to be replaced was on the main line. Therefore, the Carrier contends "the closest employee was called and used".

This Board has reviewed the record in this case and we find that the Organization has met its burden of proof that the Carrier violated the Agreement when it assigned a trackman to perform the vehicle operator's work to change rail on November 6 and 7, 1990. This Board recognizes that there was a broken rail that had to be repaired, but in order for the Carrier to not call the regularly assigned person, it must establish that an emergency existed at the time. Although a broken rail can constitute an emergency, it does not always do so. Broken rails occur frequently on the railroad, and it is often possible for the Carrier to operate around it. There is simply insufficient evidence in the record to support the Carrier's position that the broken rail at issue in this case, constituted such an emergency that the Carrier could avoid the clear language of the Agreement which required the Carrier to call the Claimant to perform work as a boom truck operator.

This Award should not be read by either party as meaning that a broken rail does not constitute an emergency. It should only be read to require that if a Carrier takes the position that an emergency existed and it can avoid the language of the Agreement in order to meet that emergency, it must show with sufficient evidence in the record that its operations were sufficiently disrupted as to constitute an emergency. In this case, the Carrier did not present such proof. Therefore, the claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.