

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31086
Docket No. MW-30885
95-3-92-3-757

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 Employees
(
(CSX Transportation, Inc. (former Louisville
(Nashville Railroad Company)

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

- (1) The Agreement was violated when the Carrier assigned Handerson Division employe Oscar Cotton to clean out a ditch and culvert on the St. Louis Division at Mile Post 176 on March 6 and 7, 1991 [System File 8(6) (91)/12(91-828) LNR).
- (2) As a consequence of the aforesaid violation, St. Louis Division furloughed Backhoe Operator D. E. Russell shall be allowed sixteen (16) hours of pay at the backhoe operator's straight time rate of pay."

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.

On March 6 and 7, 1991, the Carrier assigned Mr. Cotton, who holds no seniority on the St. Louis Division, to operate a backhoe at Mile Post 176 on the St. Louis Division.

The Organization took exception to the Carrier's action and filed the instant claim contending that Claimant was on furlough on the dates in question and was available and qualified to perform the work.

The Carrier denied the claim pointing to its rights under Rule 10 of the Agreement to transfer from one seniority district to another in an emergency situation. The Carrier contends that on the dates in question, a ditch and culvert had "plugged" and could have caused a possible washout of tracks. Since more rain had been forecasted, the Carrier believed it had to expeditiously clean out this area. Therefore, the Carrier argues that this particular situation was an emergency and that under Rule 10 it was within its rights to transfer Mr. Cotton to work in the area operating a backhoe.

The Organization appealed the claim alleging that this was not an emergency situation because it took two days to complete. The appeal was denied.

This Board has reviewed the record and we find that the Carrier did not violate the Agreement when it assigned an employee from one seniority district to another to perform the work in an emergency situation. Rule 10 (a) states:

"If it should be essential, in the opinion of the Management, to efficient operation to transfer an employee from one seniority district to another in the same subdepartment, that may be done. Individual employees or gangs will not be transferred out of their respective seniority districts to another district, except under the following conditions:

1. In emergencies;"

The record reveals that prior to the claim dates, March 6 and 7, 1991, the Carrier discovered an obstructed culvert at Mile Post 176 on Carrier's tracks. The water level had risen and more rain was in the forecast. Carrier officials determined that any further rise in the water level could result in erosion of the roadbed and the Carrier decided that it wanted to correct this hazard immediately. The Carrier then exercised its option in an emergency situation to call in a Backhoe Operator from another seniority district.

The Organization contends that the Backhoe Operator was called in from another seniority district to perform "routine track maintenance." In addition, the Organization contends that the alleged emergency condition occurred as a result of the Carrier

failing to exercise "managerial foresight" and therefore, the Carrier negligently allowed a condition to become an emergency. The Organization argues that the Carrier cannot avoid the clear terms of the Agreement by creating a false emergency.

However, this Board disagrees. There is nothing in the Agreement that states that an emergency that results from an alleged failure to previously act properly thereby precludes the Carrier from calling in employees from other seniority districts. In other words, even if the Organization's position were correct, and we are not convinced that it is, the Carrier still has an option under Rule 10(a)(1) to bring in employees from other seniority districts when an emergency arises. This Board has been convinced by sufficient evidence that there was an emergency on the dates in question and therefore, the Carrier acted fully within its contractual rights.

Since the Carrier provided sufficient evidence to support its affirmative defense that an emergency condition existed which allowed it to bring in employees from another seniority district, this claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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