

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31358
Docket No. MW-30791
96-3-92-3-587

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 Employes
(
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad
(Company)

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

- (1) The Agreement was violated when, on April 17, 1991, the Carrier called and assigned Maintenance of Way Welding Subdepartment Welder R. J. Fisher and Junior Track Subdepartment employee J. E. Gordon to perform overtime service (repairing track) at Mile Post 50.9 of the Dubuque Subdivision, instead of calling Track Subdepartment employees J. A. Jangula and V. L. Meyer of the Dubuque Section Crew (System File C-11-91-C060-02/8-00051 CMP).
- (2) As a consequence of the aforesaid violation, Claimants J. A. Jangula and V. L. Meyer shall each be allowed pay for six (6) hours at their overtime 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 April 17, 1991, Claimants Jangula and Meyer were members of the Carrier's Dubuque Section Crew and held seniority in the Track Subdepartment. Jangula was the Section Foreman. On that date and after Jangula and Meyer completed their tours, a need arose to repair an open joint discovered at MP 50.9 on the Dubuque Subdivision.

Relief Roadmaster M. A. Cherne twice called Jangula at home for the repair work. However, Jangula was not at home when Cherne's calls came in. Although Jangula had a pager (which he purchased at his own expense) and which was on at the time the calls were made, Roadmaster Cherne did not place a call to that pager. Jangula had previously notified the Dispatcher of his pager number and had also posted that number at headquarters. Further, Jangula had previously been called out for work by a call to his pager, Roadmaster Cherne did not call Meyer at all. Cherne states that he did not do so because Meyer previously refused overtime work. Meyer was at home at the time the calls were made to other employees.

An employee from the Welding Subdepartment (R. J. Fisher) and a Junior Track Subdepartment employee (J. E. Gordon) were contacted and utilized to do the repair work. This claim seeks six hours of pay for Jangula and Meyer at their overtime rate.

For the sake of discussion (and noting that the Organization disputes that an emergency existed), and in order to give the Carrier the benefit of the doubt, we shall assume as the Carrier argues that the existence of the open joint on April 17, 1991 constituted an emergency. That does not, however, require a denial of the claim.

While Rule 8 provides that "Emergency service may be performed without regard to seniority", the ability to assign work in emergency situations is not unfettered. See Third Division Award 21222 involving an emergency situation:

"... It has been held repeatedly that Carrier has the obligation to make a reasonable effort to communicate with employees in situations analogous to that herein Even with the broad latitude permitted Carrier in an emergency situation, the obligation still persists to make a reasonable effort to call the employees provided by rule for the work"

Therefore, the question in this case is whether Roadmaster Cherne made a reasonable effort to contact Jangula and Meyer before seeking the services of other employees. We find he did not.

With respect to Jangula, because he was a Section Foreman, Jangula purchased a pager which he carried with him. The Carrier was advised of Jangula's pager number and the record reflects that the Carrier had used that number in the past to call Jangula for work. Given those facts, there is no sufficient reason demonstrated by the record why Roadmaster Cherne could not at least have attempted to call Jangula's pager number in this situation.

With respect to Meyer, we similarly find that it is an insufficient basis to refuse to call Meyer at all because in the past Meyer allegedly refused overtime work. Meyer states that he never refused to work when called. Moreover, there is no evidence that the claimed "emergency" was so dire that the situation precluded at least an effort to call an employee otherwise contractually entitled to perform the work.

With respect to a remedy, Claimants lost work opportunities as a result of Roadmaster Cherne's actions. As such, Claimants should be compensated for that loss. If Claimants' work records for that week contractually entitled them to overtime had they been called to work, such compensation shall be at the applicable overtime rate.

AWARD

Claim sustained in accordance with the Findings.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of February 1996.