

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31825
Docket No. MW-31301
96-3-93-3-210**

The Third Division consisted of the regular members and in addition Referee W. Gary Vause when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned junior employes to perform overtime service at a derailment at Battle Mountain, Nevada on January 8, 9 and 10, 1992, instead of assigning senior employes J.L. Majalca, J.L. Sanchez, J.T. Evans, R.G. Macias, J.H. Zamudio, J. Parise and G. Alviso (Carrier's File MW92-71 SPW).

(2) The Agreement was violated when the Carrier assigned junior employes to perform overtime service at a derailment at Battle Mountain, Nevada on January 8, 9 and 10, 1992, instead of assigning senior Machine Operator B.C. Marin (Carrier's File MW92-72).

(3) As a consequence of the violation referred to in Part (1) above, the Claimants shall each be allowed ten (10) hours' pay at their respective pro rata straight time rates, eight (8) hours' pay at their respective time and one-half rates and eighteen (18) hours' pay at their respective double time 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 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 were given due notice of hearing thereon.

The Organization and Carrier disagree on certain facts. Based upon the Board's careful review of the record, we find that the following facts have been established.

Claimants were members of Tie Gang No. 30, which reported to Sparks, Nevada, on Monday, January 6, 1992. The gang was assigned to work four ten-hour days, Monday through Thursday.

At approximately 12:00 Noon on January 8, 1992, one of the Carrier's trains derailed at M.P. 490.5, located 250 miles east of Sparks, Nevada.

Roadmasters Sanchez and Crabtree informed members of Tie Gang No. 30 that the train had derailed and asked who would be interested in working the derailment. The employees were told that they would have to supply their own transportation as no company transportation was available at that time. Claimants did not volunteer to work the overtime assignment. Claimants all lived west of Sparks in the State of California. Other employees, who lived east of Sparks, volunteered. The Claimants, with the exception of employees Parise and Alviso, were senior to those employees who volunteered to work the derailment.

At 6:00 P.M. on January 8, 1992, Roadmaster Sanchez was told to locate 15 to 18 additional men in the Sparks area to work the derailment. The additional men were told that transportation would be available for a 5:00 A.M. departure on Thursday, January 9, 1992.

All Claimants worked ten hours straight time and six hours overtime on January 9, 1992. All Claimants worked one hour overtime on January 10, 1992. Claimants were compensated for the hours they worked.

The Organization argues that by assigning junior employees to work at the derailment instead of assigning the work to the senior Claimants who were working on regional Tie Gang No. 30, the Carrier violated Rules 1 (Scope) 2 (Subdepartments) 3 (Classes) 5 (Seniority) 6 (Seniority Rosters) 25 (Work Limits) and 28 (Overtime). The senior employees were entitled to the work and no emergency existed upon which an exception could be based.

The Carrier argues that the derailment constituted an emergency, and the Carrier's action to allow the junior employees to voluntarily work the derailment did not violate any term of the Agreement cited by the Organization. The Organization bears the burden of proof to show that the Carrier contractually restricted its right to freely exercise its managerial prerogatives. Finally, the Carrier argues that even if the claim were to be found valid, the Claimants would not be entitled to the excessive remedy requested.

Rule 25(b) contains the following provision on overtime during emergencies:

"Preference for Overtime - (b) Employees of gang with designated limits will have preference to casual overtime in connection with work performed by such gang. Other employees will have preference to overtime in connection with the work projects performed by such employees. Overtime in connection with emergencies will be handled by most readily available forces, with preference to the employees of designated territory when time permits. This rule does not preclude gangs working together."
[Emphasis added.]

The term "emergency" is defined in WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY as "a sudden, urgent, usually unforeseen occurrence or occasion requiring immediate action." The derailment at Battle Mountain, Nevada, on January 8, 1992 meets that definition of an "emergency."

In Second Division Award 8093, the Board considered the Carrier's argument that a derailment constituted an emergency and that under the wide latitude normally given Carriers in the application of scope rules in emergency situations, it was proper for the Carrier to use a Roadway Department Welder to perform a Carman's work in removing brake rigging. The Board denied the claim, stating that "derailment *prima facie* presents an emergency situation."

The Carrier in the instant case therefore was entitled to a certain degree of latitude in responding to the emergency created by the derailment at Battle Mountain, Nevada. Under the circumstances of this case, it cannot be said that the Carrier acted in an arbitrary, capricious or unreasonable manner in responding to the emergency situation created by the derailment.

The Board carefully analyzed the various Rules cited by the Organization and finds no proof of violation of those Rules. The Board therefore is of the view that the 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 26th day of December 1996.