

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35007
Docket No. MW-31590
00-3-93-3-590

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Laborer Operator L. Maxwell to perform overtime service (operate an endloader) at a derailment site in the vicinity of Mile Post 985.5 at Cherry Street, Tucson Yard on July 22, 1992, instead of assigning Loader Operator T. T. Valenzuela to perform the overtime service (Carrier’s File MofW 92-187 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. T. Valenzuela shall be allowed five (5) hours’ pay at his 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 were given due notice of hearing thereon.

This case involves a claim by the Organization that the Carrier violated the Seniority District Rules when it failed to call and assign the Claimant to perform overtime service in connection with a derailment at Cherry Street in the Tucson Yard. The Claimant is a Class 18 Endloader Operator holding and maintaining seniority within the Track Subdepartment of the Tucson Division. The overtime service in dispute involved operating the endloader to which the Claimant was regularly assigned. There is no dispute that he was contractually entitled to preference for the assignment. It is also undisputed that the Claimant, who was not on duty at the time of the derailment, was living out of his camper truck parked just outside the compound gate of the Tucson Yard and could not be reached by telephone. Accordingly, Laborer Operator L. Maxwell was given the assignment and performed five hours of overtime service on the Claimant's front endloader in connection with the derailment.

The Carrier maintains that its actions were authorized by Rule 25(b), which reads:

"RULE 25 - WORK LIMITS

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."

The Carrier asserts that because an emergency situation was created by the derailment, Rule 25(b) was not violated when it assigned Mr. Maxwell to the disputed overtime service. According to the Carrier, the alleged emergency mandated that it assign extra help as quickly as possible. The Carrier argues that because the Claimant could not be reached by telephone, he was not "readily available" for emergency work, and therefore was unable to satisfy a necessary condition under Rule 25(b) for maintaining his preference for overtime service. The Carrier asserts that the Roadmaster was not required, in the alleged emergency situation, to walk to the

Claimant's truck outside the property gate. Moreover, the Carrier argues, if the Claimant expected to be called for overtime, he reasonably should have had a telephone.

The Organization, on the other hand, argues that there is no requirement in the Agreement that an employee maintain a telephone at his normal calling place for the convenience of the Carrier. According to the Organization, the Carrier knew that the Claimant resided in his truck in an area adjacent to the Maintenance of Way compound during his regularly assigned week because the Claimant, a resident of Douglas, Arizona, could not afford to rent living quarters in Tucson. The Organization asserts that because the subject overtime service was at 5:00 P.M. on a Wednesday, the Roadmaster easily could have called the Claimant to work by the simple expedient of walking the short distance to the Claimant's truck. The Organization argues that the Carrier cannot escape its obligation to honor contractual preferences merely because it would be inconvenient to do so.

With respect to Carrier's assertion that an emergency situation existed and required the immediate assignment of extra help, the Organization asserts that the "emergency defense" was not raised during the handling of the dispute on the property. Moreover, the Organization argues that the Carrier's emergency argument is unavailing, because record evidence demonstrates that the Roadmaster elected to wait from between 15 and 20 minutes for Mr. Maxwell to return to the yard from out of town rather than walk to the Claimant's truck just outside the property.

After reviewing the record evidence, we have determined that the claim should be denied. Rule 25(b) establishes that under emergency conditions, overtime will be handled by the most readily available forces. On this record, we find that Mr. Maxwell was more "readily available" than the Claimant.

In reaching this determination, we considered the Organization's argument that the Carrier never raised the emergency defense during the handling of the dispute on the property. We think, however, that the Carrier's failure to declare an emergency is of no moment. There having been a derailment, it was apparent that an emergency existed, whether or not one was actually declared.

In making the finding that Mr. Maxwell was more "readily available" than the Claimant, we note that Mr. Maxwell was assigned to the emergency overtime service

even though he was 15 to 20 minutes away from the yard. Thus, while we find that an emergency did exist, the urgency was not so great that the Carrier could not have walked a reasonable distance to call the Claimant for service. The difficulty for the Organization's claim is that the record does not establish that the Claimant was at his truck at the time, and actually available for service.

Moreover, even if the Claimant's availability may be inferred from his written claim, there is no record basis for us to conclude that the Carrier should have known that the Claimant was available. While it might be reasonable to expect that the Roadmaster should have been prepared to walk a reasonable distance to summon the Claimant for overtime service provided the Carrier knew he was in his truck and available for work, we do not think the Roadmaster was obligated to go out looking for the Claimant without any certainty he would be found. Were it otherwise, and the Claimant in fact was not located, valuable time would have been wasted, and Mr. Maxwell's arrival at the yard would have been delayed further. Moreover, it is possible that the Carrier would have missed its opportunity to call Mr. Maxwell for the overtime service because of time spent looking for the Claimant. Accordingly, the Carrier's decision to assign Mr. Maxwell to perform the overtime service in connection with the derailment in the vicinity of Mile Post 985.5 at Cherry Street, Tucson Yard on July 22, 1992, was proper.

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 20th day of September, 2000.