

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37719
Docket No. MW-36656
06-3-01-3-173

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Chicago
(& North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call regularly assigned Assistant Foreman Truck Driver W. Hodgkins for overtime service (replace angle bars) at Mile Post 128 on the Geneva Subdivision on January 16, 2000 and instead assigned Machine Operator J. R. Sawvell (System File 9KB-6627T/1224994 CNW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant W. Hodgkins shall now be compensated for two (2) hours and forty (40) minutes' pay at his respective time and one-half 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 were given due notice of hearing thereon.

The Claimant established seniority in the Maintenance of Way and Structures Track Department as an Assistant Foreman-Truck Driver on the Clinton Section Gang headquartered at Clinton, Iowa, on the Geneva Division. He was assigned to work Monday through Friday, from 7:00 A.M. until 3:30 P.M., with Saturday and Sunday as designated rest days. Machine Operator J. R. Sawvell established seniority as a System Assistant Foreman dating from June 30, 1981.

The incident involved the replacement of a broken rail on one of two tracks in the mainline service, causing suspension of service. On Sunday, January 16, 2000, the Carrier needed an employee to perform overtime service of changing a set of angle bars on a rail joint at Mile Post 128 on the Geneva Division. The Carrier assigned Machine Operator Sawvell to operate the truck ordinarily assigned to the Claimant. It is undisputed that the Claimant lived 121 miles from the scene of the repair while Sawvell lived close by.

The Organization submitted a claim contending that the Carrier violated the Agreement when it did not select the Claimant to aid in the repair of the broken rail. According to the Organization, it was improper to assign a junior employee because the Claimant, who was properly assigned to the relevant gang, should have been called. While the Carrier asserted that an emergency existed, the Organization refutes said argument. As a result of this alleged violation, the Organization requests that the Claimant be compensated two hours and 40 minutes at the overtime rate.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. It contends this was a true emergency situation and as such, it was appropriate to call the closest employee who could repair the rail as soon as possible. It is clear that it was not appropriate to call an employee who lived 121 miles away to perform a task that took less than three hours.

The Board finds that the Organization has not been able to meet its burden to prove that the Claimant should have been used. The Carrier proved that an emergency existed.

While there is no question that the Claimant was senior to Sawvell, given the emergent nature of the situation, it was not contrary to the Agreement to utilize Sawvell when the Claimant was located more than two hours away from the scene of the repair. In Third Division Award 27700 the Board held:

"There is no question that the Agreement reserves to employees a preferential right to perform the work of their assignments when it is required . . . that when an emergency exists, the Carrier may utilize extraordinary measures in securing employees to undertake remedial action. Accordingly, was Carrier justified in not attempting to call Claimants to report to the site of the emergency?

Two of the Claimants reside 74 rail miles distance from the site of the problem and one resided 120 rail miles away. These distances, on their face, would seem to support Carrier's contention of unavailability. In some of our other Awards we have ruled that Claimants that resided 65, 50, 47 and as near as 33 miles from the trouble site were deemed to be unavailable.

* * *

This argument ignores the fact that the individuals used were at the site 45 minutes after being notified. The interval between the time of notification and arrival at the site obviously included the time necessary to dress appropriately for work on a winter night as well as the time necessary to travel to the site. On the other hand, the Claimant residing closest to the work site would have needed an hour and 35 minutes just for driving time, if he had operated his vehicle at legal limits on the interstate, to say nothing of the one living the furthest away needing 2 hours and 18 minutes.

Accordingly, on this record we do not find an Agreement violation when Carrier failed to call Claimants located 74 and 120 miles distant from the site of the emergency for the work required to correct the situation."

Thus, after a review of all the evidence, there has been no showing that the Carrier erred when it did not select the Claimant to repair the broken rail on January 16, 2000. An emergency existed and the Carrier acted appropriately by selecting the more closely located J. R. Sawvell to perform the repair.

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 23rd day of February 2006.