

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 3-39852
Docket No. MW-37576
09-3-NRAB-00003-020681
(02-3-681)**

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
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier called and assigned junior employees T. Bailey, B. Garland, M. Riddle and T. Peterson to perform overtime derailment service at Mile Post Z-28.4 on the Kingsport Subdivision on August 4, 5 and 6, 2000, instead of Messrs. J. Dulaney and R. Correll [Carrier file 12(00-0956) CSX].**
- (2) The Agreement was violated when the Carrier called employees assigned to the Paintsville and Shelby Sections on the Big Sandy Subdivision to perform overtime derailment service at Mile Post Z28.4 on the Kingsport Subdivision on August 4, 5 and 6, 2000, instead of Messrs. J. Honeycutt and K. Hedrick [Carrier file 12(00-0955) CSX].**
- (3) As a consequence of the violation referred to in Part (1) above, Claimants J. Dulaney and R. Correll shall now be paid for twenty-four (24) hours’ overtime and sixteen (16) hours’ double time at their applicable rates of pay.**
- (4) As a consequence of the violation referred to in Part (2) above, Claimants J. Honeycutt and K. Hedrick shall now be paid for**

twenty-four (24) hours' overtime and sixteen (16) hours' double time at their applicable rates 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.

Claimants J. Dulaney and R. Correll established and hold seniority in their respective classes in the Track Department. On the dates involved in this matter, they were regularly assigned to positions at Erwin Yard. Claimants J. Honeycutt and K. Hedrick established and hold seniority in their respective classes in the Track Department. On the dates involved in this matter, they were regularly assigned to positions headquartered at Marion, North Carolina, on the Clinchfield Seniority District.

On Thursday, August 3, 2000, a train derailment occurred on the Kingsport Subdivision. Two locomotives and six rail cars derailed, causing extensive damage to almost two miles of right-of-way. According to the Carrier, those employees working closest to the derailment site on the Clinchfield Seniority District were utilized to make the necessary roadway repairs over a continuous three-day period. Specifically, the Carrier assigned junior employees instead of the Claimants to work overtime on August 4 - 6, 2000 leading to the instant claim.

On September 28, 2000, the Organization submitted its claim on behalf of Claimants Dulaney and Correll. On September 29, 2000, its claim on behalf of

Claimants Honeycutt and Hedrick was submitted. Both claims indicated the Organization's belief that the Claimants should have been called to the derailment site instead of the junior employees assigned to perform the disputed work.

According to the Organization, the Carrier refused to recognize the Claimants' seniority when it assigned junior employees to work on the derailment site on August 4-6, 2000. According to the Organization, the Carrier failed in its obligation to call the Claimants to perform the work and, therefore, the Claimants are entitled to 24 hours of overtime and 16 hours of double time. The Organization claims that the Carrier was in error when it called junior employees instead of the Claimants.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that it acted appropriately by contacting the respective junior employees to report to the derailment site on August 4 - 6, 2000. First, Claimants Dulaney and Correll were not called because of their regular assignment obligations. Dulaney and Correll were qualified to protect the yard facility at Erwin. They were also located more than 100 rail miles from the derailment site. It was appropriate to utilize junior employees closer in proximity to the site of the damage caused by the derailment.

The Carrier argues that Claimants Honeycutt and Hedrick were not called to work at the derailment site because they were needed at their regular assignments involving mandatory track inspections. The Carrier contends that the Organization cannot meet its burden to prove that the Claimants were not properly selected. The instant matter was an emergency situation and as such, the Carrier has wide discretion in selecting employees. In the instant case, the Carrier properly utilized its discretion to select the junior employees.

In the instant case, the Board finds that the Organization has been unable to meet its burden of proof to show that the Claimants should have been utilized for the work. The Carrier has shown that an emergency existed, which required that employees immediately work on the derailment. While there is no question that the Claimants were senior to the employees selected to perform the work, given the

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emergent nature of the situation, it was not contrary to the Agreement to assign the junior employees to these tasks.

Thus, after a review of all the evidence, there has been no showing that the Carrier erred when it did not select the Claimants to work at the derailment site on August 4 - 6, 2000. The Board made a finding that an emergency existed and that the Carrier did not act inappropriately by selecting the junior employees.

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 31st day of July 2009.