

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39853
Docket No. MW-37616
09-3-NRAB-00003-020750
(02-3-750)**

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 assigned overtime service (work on damaged bridges and culverts) to junior employees J. Faison, Jr., A. Burruss, T. Calhoun and M. Mays on July 13, 14 and 15, 2001 instead of Messrs. K. Brown and C. Rakes [System Files G30315101/12(01-0577) and G30316301/12 (01-0716) CSX].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants K. Brown shall now be compensated for thirty-three and one-half (33.5) hours' pay at his respective time and one-half rate of pay and one-half (.5) hour pay at his respective double time rate of pay and Claimant C. Rakes shall now be compensated for forty (40) hours' pay at his respective time and one-half rate of pay and for eight (8) hours' pay at his respective double time 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.

It appears that the basic facts of this case are uncontested. Southern West Virginia was devastated by widespread flooding as a result of severe rainstorms in May - July 2001. Immediately prior to the week of July 9, the right-of-way on the Hinton Seniority District sustained extensive bridge and culvert damage. A 50-mile portion of the main line was out of service due to the damaged bridges and culverts.

In addition to the local employees summoned to make repairs to the right-of-way, approximately six maintenance teams were sent to assist. The emergency repairs were shared on an around-the-clock basis until the tracks were restored to service. The repair teams were phased in to keep sufficiently rested employees on hand in order to decrease the chance of injury. According to the Carrier, because of safety concerns, a decision was made on Thursday, July 13, 2001 to release the 5X85 team to which the Claimants were assigned. The Carrier released the Claimants from service in order to afford them the opportunity to rest and to be ready the following Monday in anticipation of continuing the extended hours if needed for flood damage. While the Claimants were observing their regularly assigned rest days, other teams continued to make the various track and bridge repairs on Friday - Sunday.

According to the Organization, the Carrier refused to recognize the Claimants' seniority when it assigned junior employees to work on July 13 - 15, 2001. 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 overtime. 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 assigning junior employees to the work site on July 13 - 15, 2001. This was an emergency situation, and as such, the Carrier is entitled to wide discretion in utilizing its workforces. In the instant case, the Carrier allowed the Claimants to rest in preparation for work on the following Monday. It was appropriate to utilize junior employees to work over the weekend.

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 proved that an emergency existed, which required that the Carrier utilize its discretion in selecting employees for overtime work.

While there is no question that the Claimants were senior to the employees selected to perform the work, given the emergent nature of the situation, it was not contrary to the Agreement to assign the junior employees to these tasks. In Third Division Award 21477 involving another emergent situation, the Board held:

“Careful analysis of the record convinces us however that on April 4, 1974 an emergency condition did prevail due to the tornadoes and resultant destruction of facilities and equipment at Xenia, Ohio. The causal chain between this emergency at Xenia and the loading, transporting and unloading of poles and equipment from Logansport to the stricken area is direct, immediate and irrefutable. From the record before us we have no doubt that the work complained of at Logansport was performed by outside forces and signal employees from another district under the extraordinary condition of an emergency situation. We have long recognized the principle that a Carrier in an emergency has broader authority in assigning employees than under normal circumstances. Awards 20527, 19140, 16310, 15219, 14372, 13566, 12299, 9394 et. al. There was herein proven no abuse of discretion nor bad faith exercise of these emergency powers by Carrier.”

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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 perform the work on July 13 - 15, 2001. The Board has made a finding that an emergency existed and that the Carrier acted appropriately 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.