

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40296
Docket No. MW-39852
10-3-NRAB-00003-060658
(06-3-658)**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier refused to allow the employees assigned to System Gangs 8570, 8571, 8572, 8573, 8574, 8575, 8576, 8577, 8578, 8579 and 8597 to perform service on October 7 and 8, 2005, which were the remaining days of their compressed half work period, and instead were sent home with instructions to report back to their Elburn, Illinois work location on October 16, 2005, which was the first day of their next compressed half work period (System File W-0527-151/1435752).**
- (2) As a consequence of the violation referred to in Part (1) above, all employees assigned to System Gangs 8570, 8571, 8572, 8573, 8574, 8575, 8576, 8577, 8578, 8579 and 8597 on October 7 and 8, 2005 shall now each be compensated for twenty (20) hours at their respective straight time 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.

The Claimants established and hold seniority in the Maintenance of Way and Structures Department. They held regular assignments in Group 20, Group 26 and Group 27 on 11 System Tie Gangs. These System Tie Gangs worked a compressed half schedule and were 'on line' at Elburn, Illinois, on the date that the instant dispute arose.

The underlying facts of the claim are not in dispute. In October 2005, the above System Tie Gangs were working the Carrier's TRT-909 track renewal train on the Geneva Subdivision. This subdivision is a double mainline between Chicago, Illinois, and Clinton, Iowa. The gangs were working a compressed half schedule with workdays from October 1 through 8 and rest days from October 9 through October 15.

The record establishes that the track renewal train requires numerous gangs to work in support of the operation and TRT 909 required more than 100 BMWE-represented employees in support. The volume of trains passing through the Geneva Subdivision was reduced by approximately seven or eight trains per day in order to allow reduced traffic that would slow TRT-909's operations. The Geneva Subdivision volume was reduced to approximately 40 to 42 trains per day.

The record also establishes that there was a severe thunderstorm in the area of Topeka, Kansas, on October 1, 2005. The documentation in the record details how the storm dumped ten to 12 inches of water in a short period of time which caused bridge damage and some extensive damage due to washouts. The lines that pass through this area carry all Carrier traffic between Kansas City and St. Louis. Powder River Basin coal trains are part of this traffic.

Carrier traffic was rerouted during early October and the Geneva Subdivision gained additional traffic as follows:

**October 4: 55 trains
October 5: 52 trains
October 6: 51 trains
October 7: 59 trains
October 8: 59 trains
October 9: 70 trains**

Pursuant to the applicable Rules, compressed half schedules are the result of a majority vote of the employees. On October 5, the gangs were asked by the Carrier if they could begin rest days two days early and return to TRT-909 two days early. The affected BMW—represented employees did not accept. On the morning of October 6, the members of the gangs, save for Gang 8575, were notified that their positions were being reduced for October 7 and October 8. The gangs returned on October 16, their next scheduled work day. Gang 8575 did not work on October 8.

The Organization filed a timely claim on November 9, 2005, for the dates of October 7 and 8, stating:

“Commencing on Thursday October 6, 2005 Employees of Concrete Tie Gangs . . . which was working at Elburn, Illinois approximately 550 miles from Topeka, Kansas, were informed that because of torrential rains in the Topeka, Kansas area they would not be allowed to perform services for the remaining days of their compressed work period as established by Rule 40 and would therefore be released with no pay for either the 7th or 8th of October 2005 and should therefore . . . report to the designated work location again on October 16, 2005. The local Supervisors on the Concrete Tie Project explained to the employees that because of the track damage in Topeka, Kansas set off by the torrential rains they were being instructed not to perform any work on the track for the next two days.”

The Organization maintains that the Carrier violated Rule 26 – Work Week, Rule 28 – Establishing Working Hours and Rule 40 – Alternative Work Periods. The Carrier replies that Rule 21(d) provides support for the action. The Carrier had to reroute trains over an extensive portion of the rail network and there was no way that TRT 909 could work during the increased traffic on the Geneva Subdivision.

The Organization responds that the washouts were more than 500 miles away from where TRT-909 was operating. Further, by the Carrier’s own admission, the washout on the Salina Subdivision was repaired on October 3, 2005 and the line opened with limited service. None of the cited Rules allow exceptions “for changing the Claimants’ established work week/hours, track damage some 550 miles from their assembly point or the loss of a maintenance window nearly a week after the Carrier rearranged its train schedules are NOT among them and cannot be validly implied.” According to the Organization, “the Carrier did not present any credible evidence that the Claimants’ work location was directly effected by the storms some 550 miles away in Kansas.”

The Carrier counters that limited service means just that – a limitation on the traffic and the restoration of limited service did not restore the entire area of damage. The flooding created an emergency condition and Rules 21 and 27 allow for the suspension of work. The forces were reduced during the emergency and restored when the emergency was over. The flooding created a “ripple effect” and the disruption of the Kansas main line had consequences on the Geneva Subdivision – among other areas where traffic was rerouted.

The Board carefully examined the record. The issue before the Board is whether the situation in Kansas permitted the Carrier to suspend two days of operation of TRT-909 on the Geneva Subdivision in Illinois when the storm was on October 1 and the work was suspended for the October 7 and 8, 2005.

Rule 21(d) provides, in pertinent part:

“(d) Except as provided in paragraph (c) hereof, rule, agreements or practices, however established, that require advance notice to

employees before temporarily abolishing positions or making temporary force reductions are hereby modified to eliminate any requirement for such notice under emergency conditions such as flood, snowstorm, hurricane, tornado, earthquake, fire or a labor dispute other than as defined in paragraph (c) hereof, provided that such conditions result in suspension of a carrier's operations in whole or in part. It is understood and agreed that such temporary work force reduction shall be confined solely to those work locations directly affected by any suspension of operations. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by such an emergency force reduction and reports for work for his position without having been previously notified not to report will receive . . . pay at the applicable rate for his positions. If an employee works any portion of the day, he will be paid in accordance with existing rules."

Thus, the question before the Board is whether there was a causal connection between the Kansas floods and the work on TRT 909 on the Geneva Subdivision. Prior Awards cited by the Carrier place the burden of proof in cases such as the instant matter upon the Carrier to establish the existence of an "emergency condition" and the causal relationship to whether it has caused "a suspension of a carrier's operations in whole or in part." (See e.g. Special Board of Adjustment No. 605, Award 436.)

In the record before the Board, the Carrier demonstrated by convincing evidence that a weather-related emergency existed. The record contains extensive documentary evidence of the extent of the damage done in the Kansas area. The record also contains evidence of how the Carrier had to re-route trains around the disrupted main line – including increasing traffic over the Geneva Subdivision beyond what it normally is, let alone what it was reduced to for TRT 909 to operate.

The Organization's argument that there was no connection to the Geneva Subdivision because of the limited service in Kansas that began on October 3, 2005 is not persuasive. Contrary to the Organization's argument, the Carrier presented credible evidence that the Claimants' work location was directly affected by the

Kansas storms and the ensuing rerouting of traffic. The Carrier met its burden of showing a weather-related emergency existed and that Carrier operations were disrupted in whole or in part. This disruption continued to the last two days of the Claimants' compressed work schedule because of the increased traffic that rendered the work of TRT-909 as undoable.

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 1st day of March 2010.