

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40998
Docket No. MW-41149
11-3-NRAB-00003-090423**

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (former 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 sent local District employes M. Acosta, D. Perez, G. Marquez and A. Zabalza, III away from the derailment repair work at Mile Post 626.6 near the Station of Mecca on the Yuma Subdivision and continued the use of junior and Regional Gang employes to perform the derailment work on March 4, 2008 and continuing through March 8, 2008 (Carrier's File 1502558 SPW).
- (2) As a consequence of the violation referenced in Part (1) above, Claimants M. Acosta, D. Perez, G. Marquez and A. Zabalza, III shall now each be compensated for twenty-eight (28) hours at their respective time and one-half rates of pay and for nineteen (19) hours at their 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.

The facts indicate that on March 4, 2008, a derailment occurred at Mile Post 626.6 near the Station of Mecca, on the Yuma Subdivision, which is located in the Indio District. The Claimants were assigned and working various positions on the Indio District. On March 4 the Claimants were instructed to leave their work site and travel to the derailment location to deliver a wheel set for a rail car involved in the derailment. Upon their arrival at the derailment, the Claimants attended a job briefing at which time they were instructed by Manager Track Projects Mr. D. Gallegos to return to their work site.

It is the Organization's position that the derailment occurred within the Claimant's district and should have been attended to by the Local District forces with the Regional Gang forces supporting them, instead of the Regional Gang doing all of the work. It further argued that when the Carrier chose to use the Regional Gang it allowed junior employees to perform work that should have been first offered to the Claimants. It argued that the Carrier violated various Rules of the Agreement with an emphasis on Rule 25(b). It concluded by requesting that the claim be sustained as presented.

It is the position of the Carrier that the derailment constituted an "emergency" situation and it was required to clear the derailment as quickly as possible so as to allow the movement of trains, and in this kind of situation, it is allowed broader discretion in the assignment of work. Because the Carrier needed an immediate response to rectify this emergency situation, it was appropriate for it to assign the available Regional Gang forces to do whatever was necessary to assure that the damage was repaired in a timely fashion. In an effort to bolster its position it offered Third Division Award 31825, which is an on-property decision that it argued was precedential and should be followed in this instance. It closed by asking that the claim remain denied.

Rule 25(b) relied upon by the Organization states:

“PREFERENCE FOR OVERTIME - 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.” (Emphasis added)

Award 31825 relied upon by the Carrier is directly on point. Therein the Board held, in pertinent part, as follows:

“The term ‘emergency’ is defined in WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY as a ‘sudden, urgent unforeseen occurrence or occasion requiring immediate action.’ The derailment at Battle Mountain, Nevada, on January 8, 1992 meets that definition of an ‘emergency.’”

The Board finds no reason to dispute the above rationale and logic and on that basis we agree with the Carrier that the derailment that occurred on March 4, 2008, met the definition of an emergency as defined on this property.

Award 31825 recopied Rule 25(b) with an emphasis on the same portion of the Rule underlined above. It determined that the Carrier was afforded a certain degree of latitude in responding to the emergency created by the aforementioned derailment. However, there is a key difference in the factual circumstances between the present dispute and those set forth in that Award. In Award 31825 the Board stated the following:

“Roadmasters Sanchez and Crabtree informed members of Tie Gang No. 30 that the train derailed and asked who would be interested in working the derailment. The employees were told that they would have to supply their own transportation as no company transportation was available at that time. Claimants did not volunteer to work the overtime assignment. . . .” (Emphasis added.)

In the instant case, there was no offer of overtime made to the Claimants; nor did they reject that offer as was done in the cited Award. Rule 25(b) in pertinent part states:

“ . . . Overtime in connection with emergencies will be handled by most readily available forces, with preference to the employees of designated territory when time permits. . . . ” (Emphasis added)

The record reveals there was no dispute that the Local District Gang made up of the Claimants was at the site of the derailment and readily available to work and anticipated doing so as evidenced by the fact they brought a wheel set and attended a job briefing. In accordance with Rule 25(b) the work should have been offered to the Claimants. They had preference account of being employees of the designated territory. That coupled with the fact that there was no showing that their use would have caused the Carrier any delays in having the work done in a timely manner makes it clear that the Agreement was violated.

With respect to the remedy, requested we are unable to determine with certainty the number of hours expended by the Regional Gang employees. Therefore, the Board finds and holds that the parties are directed to meet and review the Carrier's records so as to determine the appropriate number of hours owed the Claimants in accordance with Part (2) of the claim.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 20th day of July 2011.