

Award No. 5887

Docket No. MW-5811

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**CHICAGO, INDIANAPOLIS AND LOUISVILLE RAILWAY
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the effective agreement when they assigned individuals holding no seniority in the Bridge and Building Department to perform repair work at Bridge 151.7 on September 2, 3 and 4, 1950;

(2) That Bridge and Building Helpers Chester V. Fleenor, C. R. Shoults and William F. McPike, be paid their respective time and one-half rate of pay for an equal proportionate share of the man-hours consumed by the individuals who were assigned to perform the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Bridge and Building Helpers Chester V. Fleenor, C. R. Shoults, and William F. McPike, are regularly employed in the Bridge and Building Department.

On September 2, 3 and 4, 1950, the Carrier assigned Track Department employees holding no seniority in the Bridge and Building Department, to assist in repairing Bridge 151.7 while the claimants were off duty.

Approximately sixty-four (64) man-hours were consumed by the Track Department employees who were engaged in this work.

The above named claimants hold seniority on the territory where the overtime service was performed.

A claim was filed in behalf of Bridge and Building Helpers Fleenor, Shoults and McPike, for compensation at their respective time and one-half rates for an equal proportionate share of the man-hours consumed by the Track Department employees who were assigned to perform the Bridge and Building work.

Claim was declined.

The Agreement in effect between the two parties to this dispute dated April 1, 1947 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

had. He was handicapped in the use of the telephone due to the fact that the service in the area having been disrupted on account of storm conditions. He was unable to contact the claimants, two of whom were members of Foreman Collin's gang and one a member of his gang. In addition to using the telephone he used a taxi cab to try to locate some men. In order to develop a gang of sufficient number to make the necessary repairs to the damaged bridge without further delay he contacted and used two extra gang employees.

The condition of the bridge was serious and an emergency condition existed. Time was important. Foreman Gould had made earnest and sincere effort to develop a gang of men composed of B&B employees sufficient to make the repairs. Being unable to accomplish this within reasonable time he utilized these two extra gang employees who were available and proceeded to the disabled bridge and made the necessary repairs. In view of the existing emergency situation which required prompt and immediate action the Carrier feels that there is no sound basis for this claim and that it should be denied.

Your Honorable Board has often recognized that emergency situations require and justify action by the Carrier that they would not take under normal conditions. Awards 603, 2025, 2817, 2921, 4259 and 4948 are specifically referred to.

In view of the facts and circumstances the Carrier respectfully request that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization on behalf of three named Bridge and Building Helpers claims that on September 2, 3 and 4, 1950 the Carrier in violation of the Agreement allowed employees not holding seniority in the Bridge and Building Department to perform work at a certain bridge and that in so doing it deprived the claimants of work, which work was performed on Saturday and Sunday, the rest days of these employees, and on Monday, a named holiday. They claim compensation at the rate of time and one-half for the equivalent of the hours worked on those days.

On Friday evening September 1, a bridge on the Carrier's main line was damaged by a flash flood. On that evening the Supervisor of Bridges with the aid of available section men made temporary repairs. On Saturday September 2 at about 10:00 A. M. these repairs appeared to be insufficient to insure safety of trains. At that time the Supervisor called Bridge and Building Foreman Gould and instructed him to obtain as many members of his gang as he could and proceed to make repairs to the bridge. He was unable to contact a sufficient number so he called two extra gang employees to assist. These two extra gang employees worked on the three days.

The work involved was work of the Bridge and Building employees. On the facts as disclosed and within the meaning of awards of this Division this was an emergency. The employees, or a sufficient number of them to perform the work, in the emergency were entitled to be called if by a reasonable effort to contact them they could be reached. If they could not be reached by a reasonable effort, then the Carrier was justified in calling and using others. See Awards 4200 and 4841.

The facts as disclosed by the record justify a conclusion that a reasonable but unavailing effort was made to contact Bridge and Building employees on Saturday September 2.

There is, however, no evidence of reasonable effort or of any effort at all to locate them and bring them in for work which was done on September 3 and 4. There is likewise no evidence indicating a reason why if they

had been called for the 3rd and 4th they could not on those days have displaced the extra gang employees.

The conclusion therefore is that working the extra gang employees on Saturday was proper under the then existing emergency, but as to Sunday and Monday the Carrier may not be excused from calling Bridge and Building employees.

The claim should be allowed for a pro rata rate for Sunday and time and one-half rate for Monday since Monday was a holiday.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The claim has been in part sustained.

AWARD

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 24th day of July, 1952.