

Award No. 11152

Docket No. MW-10307

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**ATLANTA AND WEST POINT RAILROAD -
THE WESTERN RAILWAY OF ALABAMA**

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

(1) The Carrier violated the effective Agreement when it used Extra Gang Foreman R. G. Wilson to perform overtime service on the Montgomery section from 7:15 P. M. on February 26, 1957 to 1:45 A. M. on February 27, 1957 and failed to call and use Mr. M. P. Whitman who was the regularly assigned Section Foreman on that section.

(2) Section Foreman M. P. Whitman now be paid for six and one-half (6½) hours at his time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimant, Mr. M. P. Whitman, was regularly assigned to the position of Section Foreman on the section headquartered at Montgomery, Alabama.

On February 26, 1957 a derailment occurred on the territory comprehended in the Claimant's regularly assigned section.

During overtime hours on the afore-mentioned date, the Carrier called Extra Gang Foreman R. G. Wilson, who, in turn, called certain members of his crew, together with two members of Claimant Whitman's section gang, to repair the damage resulting from the above referred to derailment. Extra Gang Foreman Wilson commenced work at 7:15 P. M. on February 26, 1957 and was released therefrom at 1:45 A. M. on February 27, 1957.

The Claimant was available, ready and willing to perform overtime service on the territory comprehended in his regularly assigned section, but was not called or notified to do so.

Consequently, a claim was filed in behalf of the Claimant, requesting that he be allowed six and one-half (6½) hours' time and one half pay because of this improper work assignment.

germane to the dispute. There is no rule in the agreement that prohibits our calling extra gangs in emergencies to perform whatever work might be desired. Our current working agreement contains no classification of work rule. The men involved in this claim are all in the same seniority sub-division, track department, so there was no crossing of crafts or seniority districts.

Boiled down, we have a claim where carrier had the west end of its largest yard blocked. No trains could be run in or out. In order to relieve the emergency, the nearest track forces were called. There was no necessity for calling Foreman Whitman to supervise the two men of his gang who were worked.

Carrier feels this claim is utterly without merit and respectfully requests it be denied.

All data contained herein has been made available to petitioner.

OPINION OF BOARD: Claim here is made on behalf of M. P. Whitman, regularly assigned Section Foreman, for 6½ hours pay at the overtime rate, when service was performed by an Extra Gang Foreman, at Montgomery, Alabama, during a period of 6½ hours between 7:15 P. M. February 26, 1957 and 1:45 A. M. on February 27, 1957.

Claimant here was regularly assigned to the position of Section Foreman. On said date, a derailment occurred on his section. An Extra Gang Foreman, not on duty at the particular time was located near the scene of the derailment, where he and his gang were camped.

The Extra Gang Foreman was called and used to clear the derailment. No call or effort to call the Claimant was made by Carrier to summon him to do the required work, although the record shows that the Extra Foreman did call two laborers from the Claimants' gang to assist in doing the necessary work required.

Claimant held the regular assignment to do the section work; and was available for service at any time, including emergency conditions, which might arise.

Carrier has offered no valid reason why it did not call the Claimant, except that the Extra Gang Foreman was close by at the particular time.

The regular assigned Section Foreman should have been called, to do the required work, and Carrier has not shown that any undue delay would have resulted had the Claimant here been called ahead of the Extra Gang Foreman. Under the facts here, Carrier did not comply with the Agreement between the parties.

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

Claim should be sustained, and Claimant should be compensated for the time, he would have earned had he been properly called by Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1963.