

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the "Agreement between the Nashville, Chattanooga & St. Louis Railway and its Maintenance of Way Employees represented by the Brotherhood of Maintenance of Way Employees" when, on December 1 and 2, 1958, it assigned individuals holding no seniority rights thereunder to perform track repair and clearing work account of a derailment at Bellevue, Tennessee.

(2) Furloughed Track Foreman M. T. Hatcher and Track Laborers J. B. Guerin, J. D. Neely, Homer Mitchell, Hershel Hardin, W. C. Turner, C. B. Turner, R. T. Sanders and J. L. McMahon each be allowed pay for sixteen (16) hours at his respective straight time rate and for nine (9) hours at his respective time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: At about 3:10 A.M. on December 1, 1958, twenty-seven (27) cars of Freight Train No. 56, enroute from Memphis to Nashville, derailed at Bellevue, Tennessee, which is on the territory now called the N.C. & St.L. District and which was formerly the Nashville, Chattanooga & St. Louis Railway. Although the former Nashville, Chattanooga & St. Louis Railway has merged with the Louisville and Nashville Railroad Company, separate agreements continue to control on the territories formerly comprising the two systems.

At 7:00 A.M. on the aforementioned date, Extra Gang Foreman Anderson and eight (8) members of his gang, who hold seniority rights on the Nashville Terminals of the Louisville and Nashville RR., were notified and instructed to proceed to Bellevue to augment and assist N.C. & St.L. District track employees in the performance of the work of clearing the wreckage and repairing the tracks damaged by the derailment.

The call on Local Freight Train No. 112 which train is scheduled to depart Bruceton, Tennessee, at 6:30 A.M., was held up because of the derailment.

Fast Freight Train No. 54, which is scheduled to leave Bruceton 12:55 P.M., was held north of Bellevue until the main track was opened resulting in this train being delayed approximately 5 hours and 30 minutes.

Local Freight Train No. 111, which is scheduled to depart Nashville 6:30 A.M., was held at Nashville until the line was open which resulted in a delay of about 11 hours.

Fast Freight Train No. 53, which is scheduled to depart Radnor (Nashville) and is usually called for 9:00 or 9:30 A.M., was held at Nashville resulting in a delay of approximately 11 hours and 30 minutes.

Numerous awards issued by the various Divisions of the Board regarding the question of "Emergency" show the dependence placed on whether or not the main line is blocked and whether trains are delayed or waiting the clearing of the main line, as determining guides in declaring the emergency.

Carrier submits there can be no question but that an emergency existed which required expeditious handling.

The employees admit that an emergency existed as evidenced by the following quoted from the General Chairman's letter of March 27, 1959, *supra*:

"There is no dispute as to whether or not there was an emergency existing. I realize that any time main line track is blocked by derailment, fire or other hazards, that an emergency does exist insofar as the operation of the railroad is concerned. In fact, there was a double emergency existing at the scene of this wreck at Bellevue, because not only was the main line track obstructed, but a fire developed account of the cars carrying inflammable material catching fire after the wreck occurred. This produced a hazardous condition and fire trucks from all over the general area were asked to come to the scene of the wreck to try to extinguish the fire to keep down the possibility of serious explosions among the wreckage where inflammable material was involved."

Carrier, therefore, submits that the emergency which existed warranted the action taken for which reason the claim should be declined.

OPINION OF BOARD: On December 1, 1958 at approximately 3:10 A.M. a derailment took place at Bellevue, Tennessee, on the territory of the former Nashville, Chattanooga & St. Louis Railway. In order to augment the work of the local track gang in clearing the tracks, track laborers were called from the Nashville Terminal District. The Claimants in furloughed status, available for work with established seniority in the district were not called.

The Claimants contended it was a violation of the current agreement between the parties to utilize men outside the seniority district to perform this work. Rules 1, 3 (a), 4 (a), 5 (a), and Rules 13 and 26, were specifically cited in support of their position.

The Carrier did not deny the existence of the above rules and their application, but alleged that the emergency situation confronting them did not give time to call the furloughed men.

This Board is of the opinion that the emergency situation confronting the Carrier permitted the use of the Nashville Terminal Gang. The main line was torn up; a serious fire took place delaying the work of clearing track. The Nashville gang was available intact at 7:00 A.M., and dispatched to the derailment. Although the furloughed men were not contacted and no evidence in the record reveals that any attempt was made to contact them to assist at the derailment, this fact in itself is not a conclusive violation of the agreement.

The serious nature of the derailment on the main track, subsequent fire and damage incurred created an emergency situation, this coupled with the problem of contacting the furloughed men over a wide area, justified the conduct of the Carrier.

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1964.