

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, on December 6 and 7, 1958, it used employes holding seniority on the Chattanooga Division to perform work in connection with a derailment near Kingston, Georgia on the Atlanta Division while the Claimant Track Laborers were furloughed from and available for service on the Atlanta Division and, as a consequence thereof:

(2) Each of the Claimant Track Laborers named below be allowed pay at his respective straight time rate for an equal proportionate share of the total number of man-hours consumed by the Chattanooga Division employes in the performance of the work referred to in Part (1) of this claim.

Edd Lynn	W. D. Betton	Edd Jerrell
Grady Heath	Mason Adams	Hayden Minter
George Ramsey	A. E. Hasty	Henry Alexander
Berry Manley	Oliver Wade	Jewell Abbott
		Andy Drake

EMPLOYEES' STATEMENT OF FACTS: Although the former Nashville, Chattanooga & St. Louis Railway has merged with the Louisville and Nashville Railroad, the Agreement between this Brotherhood and the former Nashville, Chattanooga & St. Louis Railway, now called the N. C. & St. L. District, was continued in full force and effect.

At about 5:00 P. M. on December 6, 1958, a freight train derailed near Kingston, Georgia, which is on the Atlanta Division of the N. C. & St. L. District.

Edd Lynn, who resided near Cartersville, Georgia, wrote the General Chairman under date of September 21, 1959, as follows:

"I received your letter of a recent date asking me concerning the wreck at Kingston, Ga., Dec. 6, 1958.

I was at the wreck alright, but I didn't ask to work and no one ask me to work, so I am writing the facts about myself."

When this matter was handled with Foremen Sherman and Baxter, they advised as follows:

"LOUISVILLE AND NASHVILLE RAILROAD COMPANY
Sherwood, Tenn. STATION 12/15/59

Mr. H. B. Lewis
Division Engineer
Chattanooga, Tenn.

Mr. Lewis No. 50 train burned off journal at Kingston, Ga., Dec. 58, causing a very bad derailment. I was Sec. Foreman there at this time. Mr. Mathis ask me to get some of the cut off men there at Kingston to work. I put H. T. Sievers, J. E. Potts, Emory Applin, Goliah Yang to work. Alex Zachery or Raymond Wells. Neither of those men ask me about work and to the best of my knowledge I do not remember seeing those men.

Yours truly,

/s/ A. U. Sherman"

"LOUISVILLE AND NASHVILLE RAILROAD COMPANY

12-12-59

Mr. H. B. Lewis
D. E.
Chattanooga, Tenn.

This connect with conversation at Tilford Yard the other day. In connection with wreck at Kingston December 1958. I do not recall any men asking me to be allowed to work, especially John Hill. I did not see Hill at all.

Yours,

/s/ W. F. Baxter"

Carrier submits the circumstances involved warranted the handling given by carrier for which reason the claim should be denied.

OPINION OF BOARD: At about 5:00 P.M. on December 6, 1958, a freight train derailed near Kingston, Georgia, which is on the Atlanta Division of the Nashville, Chattanooga & St. Louis Railway. Shortly thereafter, the Extra Gang Foreman and track laborers in his gang, together with other

track department employes who held seniority on the Chattanooga Division were notified to go to Kingston to augment and assist the Atlanta Division track department employes in clearing the wreckage and repairing the damage.

The Claimants, track laborers with seniority in the Atlanta Division, but in furlough status, were available but not called. The work was assigned to the Chattanooga Division track department in violation of Rule 4 (a), 13 (c) and 26 (c), of the current agreement. The pertinent portions read as follows:

"The seniority of division employes will be restricted to the sub-department in which employed and to the following seniority districts: present Atlanta Division; Chattanooga Division; Huntsville Division; Nashville Division; and Paducah and Memphis Division.

Construction sub-department employes shall have system seniority."

Rule 26 (c) in its pertinent sections reads as follows:

"Employes laid off by reason of force reduction in order to retain their seniority rights, must, within ten (10) days from the date cut off either place themselves or file their address, in writing, with the proper official. . . ."

The record states and has not been denied that the Claimants complied with Rule 26 (c).

Rule 13 (c) in its pertinent sections reads as follows:

". . . When temporary vacancies or temporary positions as laborer in B&B gangs are filled, employes temporarily out of the service on account of force reduction will be called back to the service in order of their seniority."

The record reveals no contention on behalf of the Carrier that any effort was made to obtain the furloughed Atlanta Division laborers for service at the time in question.

The Claimants contended that no effort was made to call them for the work assignment although they could be located within the vicinity of the derailment. Foremen in other seniority districts, at considerable distance from the work, rounded up their gangs and performed the Claimants' work. Further, Claimants offered evidence that the Carrier had instructed a foreman not to call cut off men and none were so utilized.

The Carrier contended that the derailment at Kingston, created an emergency situation which required prompt handling in order to repair the damage and get trains in operation.

It is the opinion of this Board that the Carrier has failed to answer with cogent evidence why no furloughed employes of the Atlanta District were utilized, whereas employes of extra gangs from other seniority districts were used. Did the emergency situation justify a failure to call furloughed men? We think no. The crews utilized from the Chattanooga Division had to be gathered up from around their area, and considerable time taken to get them to the derailment.

If the Rules require that furloughed men should be used in their district no effort was made to recruit them on this occasion. Furthermore, the emergency situation does not indicate from the record that Atlanta Division laborers were not more available than Chattanooga Division men.

Thus we are of the opinion that the contentions of the Claimants are well taken.

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 has been violated.

AWARD

Claim sustained.

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.