

Award No. 12917
Docket No. MW-12315

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORTHERN PACIFIC RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when, on November 22, 1959, it transferred and used Bridge and Building employees holding seniority on the Idaho Division to assist in reconstructing Bridge No. 40 on the Tacoma Division while the claimant Bridge and Building employees were furloughed from and available for service on the Tacoma Division and, as a consequence thereof:

(2) Each of the claimant Bridge and Building employees named below be allowed pay at his respective straight time rate and/or time and one-half rate for an equal proportionate share of the total number of straight time hours and/or overtime hours as were consumed by the Idaho Division Bridge and Building employees in performing the work referred to in Part (1) of this claim.

O. M. Scaggs	R. L. Michel	R. D. Brotzman
John Dorn	J. L. Pickens	L. L. Leen
J. F. Wileman	J. L. Eberwein	A. J. Joubert
A. L. Staples	R. L. Anderson	R. G. Courser
B. C. Spencer	C. R. Leach	D. L. Sigurdson
A. E. Boyle	T. E. Lynn	K. L. Courts
Wilbur Nesbitt	R. F. Parsons	

EMPLOYEES' STATEMENT OF FACTS: Bridge No. 40, spanning Cabin Creek, is located approximately four miles west of Easton, Washington on the Carrier's Tacoma Division. It is approximately 83 rail-miles from Tacoma, Washington and approximately 383.3 rail-miles from Palouse, Washington.

On November 22, 1959, the aforesaid bridge was washed out by high water and floods which occurred on the Tacoma Division.

Notwithstanding the lack of qualifications of the claimants, these employees were all located west of the Cascade Mountains. Trains of the Northern Pacific Railway were being detoured over the SP&S Railway, and the main highway over the Cascade Mountains was closed. Consequently, it was physically impossible to dispatch a qualified bridge crew from west of the Cascade Mountains to Bridge 40 during the period of this emergency.

This Division in several awards has taken cognizance of emergencies: In Award No. 5425 this Division stated:

"Being an emergency, Carrier could have relied with immunity upon men other than Maintenance of Way employees to correct the condition present on the dates in question."

In Award No. 7764 this Division stated:

"But in emergencies of this kind, extraordinary procedures which are not clearly in violation of specific agreement provisions may be followed."

Those findings were made by this Division in the absence of a rule similar to Rule 20 of the April 1, 1952 Maintenance of Way Agreement. The impact of Rule 20 on the emergency that existed at Bridge 40 in the latter part of November and forepart of December, 1959 completely divests this claim of any merit.

The Idaho Division bridge crew consumed a total of 450 straight time hours and 510 overtime hours at Bridge 40 during the period November 23 to December 2, 1959, inclusive. The Employees are demanding that the overtime hours be prorated among these twenty claimants and that these hours be paid for at time and one-half rate. This Division in numerous awards, such as Nos. 3193, 3232, 3488, 3587, 3745, 3955, 4244, 4467, 5782, 5950, 5952 and 6760, has established the principle that the straight time rate is the penalty rate accruing to an employee deprived of work to which he is entitled to perform by agreement. Therefore, viewing the claim covered by this docket from a standpoint most favorable to the Employees, the claim of the twenty B&B helpers is limited to payment at the **B&B helper's straight time rate for the number of hours consumed by the Idaho Division B&B helpers at Bridge 40.**

Rule 20 without qualification provides that employees may be transferred from one seniority district to another and that when so transferred such employees may perform work on the seniority district upon which transferred. The phraseology employed by the parties to the April 1, 1952 Agreement in writing this rule is so clear that it defies all argument. This is the rule under which the Carrier transferred the Idaho Division bridge crew to the Tacoma Division, and the parties in writing Rule 20 agreed that what the Carrier did on November 23, 1959 was proper. Under the plain provisions of Rule 20, the claim covered by this docket should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: On November 22, 1959, Bridge No. 40 spanning Cabin Creek and located four miles west of East Washington on the Tacoma Division of the Northern Pacific Railroad, was washed out by high waters resulting from heavy rains. Carrier assigned a Tacoma Division Bridge Crew to construct a pile trestle washout bridge at each end of the existing steel bridge and to place falsework bents under the steel spars. A bridge crew holding seniority in the Idaho Division was also assigned to assist in reconstructing Bridge No. 40. At this time twenty employees holding seniority

in the Bridge and Building Department in the Tacoma Division were on furlough.

Organization claims that Carrier violated the Agreement when it failed to recall the furloughed employees before assigning the Idaho Division Bridge and Building employees to restore the bridge. It contends that all Bridge and Building Department work occurring in a seniority district belongs to the employees in that district prior to the hiring of any employees or the transferring of other employees from other seniority districts. If these furloughed employees had been notified, they would have been available and would have reached the work location in time to be of service with the pile driving crew. Organization points out that Carrier delayed two days before alerting the Idaho crew. Carrier, on the other hand, rejects these contentions and asserts that it was under emergency conditions and in compliance with Rule 20.

With flood conditions interfering with transportation west of the Cascade Mountains, Carrier drew its help for installing the trackage and reconstructing the bridge from the Tacoma Division and Idaho Bridge crews available east of the range. The emergency demanded the most available and skilled employees. In employing the Idaho crew in addition to the Tacoma crew, who had seniority, Carrier secured the needed foreman and first and second class carpenters. The furloughed employees comprised a crew of helpers, none of whom were carpenters or foremen.

There is no question that the Claimants had seniority; but because they were on furlough and hence at scattered locations, the likelihood of reaching them on time to meet the imperative needs is questionable. Even if reached, the condition of the roads was such that the time or even the possibility of their arrival was uncertain. Reliance upon them would have been impractical.

We find Rule 20 applicable. This special rule permits Carrier the right to transfer employees temporarily from one seniority district to another for a period not to exceed six months without impairing their seniority in the district from which they were transferred. The one exception provided is in Rule 21 which is not pertinent to this dispute.

For the foregoing reasons we find the claim is without merit.

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 of the parties 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 28th day of September, 1964.