

Award No. 13474
Docket No. MW-13028

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, 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 when it called and used an employee junior in seniority to Welder L. R. Smith for overtime service on December 10 and 11, 1960.

(2) Welder L. R. Smith now be reimbursed for the exact amount of monetary loss suffered account of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: At about 1:20 P.M. on December 10, 1960 (a regularly assigned rest day) a wreck occurred near Sawyers Mill, Tennessee.

In connection with this dispute, Track Supervisor J. W. Kizer advised Division Engineer Nottingham as follows:

"Bruceton, Tennessee
January 19th, 1961

Mr. R. E. Nottingham.

Referring to the attached, this wreck happened about 1:20 P.M. on the 10th, day of December. I was the first railroad man at the wreck, I look it over and as there was a lot of twisted rail etc. I saw that I could use a welder, I went to my home and started to call foreman and men to work, I placed a call for Mr. L. R. Smith, at Parson, Tennessee. This is where he lives, and the operator said that the line was busy, and she ask me if I wanted her to place another call and I told her I did not have time to wait on the call. The Dispatcher was trying to get hold of me at this time, he wanted me to get back to the wreck and try to get all the people that was trying to see the wreck to get back out of the way as it was dangerous for them to be around.

The foreman and men was starting to show up by this time and I did not get another chance to try and place a call for Smith, I

We respectfully request that the claim be allowed.

CARRIER'S STATEMENT OF FACTS: On Sunday, December 10, 1961, a wreck occurred at Sawyers Mill, Tennessee. Because of a considerable amount of rail having been twisted, it was necessary that a welder be dispatched to the scene. Accordingly, Supervisor J. W. Kizer went to his home and placed a call for a foreman and other men needed to clear the wreck. He placed a call for L. R. Smith, Welder, at Parson, Tennessee, as this is where he resides. The phone operator advised that the line was busy and inquired as to whether it was desired to place the call later. At that time the train dispatcher was endeavoring to reach Supervisor Kizer to get him back to the wreck for the purpose of keeping onlookers away. The foreman and the other employees were beginning to show up and therefore, because of the urgency of the situation, it was necessary that Mr. Kizer remain at Sawyers Mill. Phone service there was out and as it was impossible for Mr. Kizer to leave and go to Bruceton to again attempt to contact Mr. Smith, he used Mr. Smith's helper, L. P. Noles, as welder, as the latter had shown up at the derailment.

POSITION OF CARRIER: Carrier asserts that in view of the urgency of the situation, it did not violate the agreement when it first failed in an attempt to reach Smith. Further, while it is true that Supervisor Kizer endeavored to reach Smith, we have been advised that the latter had not actually filed his phone number as required by the agreement. We quote from a report made to Division Engineer R. E. Nottingham by Supervisor J. W. Kizer, Bruceton, Tennessee, on January 10, 1961:

"Mr. Smith has never filed his telephone number with me, and he has never ask for any work like this, I talked to him about this matter on the 12th and told him that Mr. Noles showed and ask if he was needed, and I ask him why he did not do this when he heard about the wreck, and he said that he did not know that a welder was ever needed at wrecks.

"I ask Mr. Smith, a few days ago, if he knew what the agreement said and if he knew what he was supposed to do if he wanted this work and he said that he did, but he has not yet at this time filed his number with me and stated that he wanted the work if it happened again, I tried to comply with rule 30, but I was needed at the wreck, and could not stay in Bruceton, just to get hold of Smith."

In view of the foregoing carrier's position is that there has been no violation of the current agreement and the claim, therefore, should be denied.

OPINION OF BOARD: A derailment occurred on the regularly assigned rest day of the Claimant. The Track Supervisor placed a call to Claimant's home, and was told by the operator that the line was busy. Subsequently, an employee junior to Claimant was given the opportunity to work. We are asked to make a judgement as to whether this action constitutes a violation of Rule 30 (b), the applicable portion of which states that a reasonable effort must be made to contact the senior employees so registered, before proceeding to the next employee on the register.

The Carrier defends its action by pleading that this was an emergency situation and secondly that Claimant himself violated the first section of Rule 30 (b) by not providing management with his telephone number. This latter defense is difficult to understand in view of the Supervisor's own

statement that he did place a call to the Claimant. Admitting that a derailment in this case was an emergency, we do not in deference to the record, think that a reasonable effort was made to contact Claimant. The facts militate against the defenses of the Carrier. The emergency was not of such severity that several more calls either by the Supervisor or by someone else in authority, could not have been made. A reasonable effort was not made. The rule was violated. We will sustain the claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1965.