

Award No. 13858

Docket No. MW-14997

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE DELAWARE AND HUDSON RAILROAD CORP.

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

(1) The Carrier violated the provisions of the effective Agreement when it did not call Trackman Dominic A. Lepera, John Vasilenko, Stanley Tercheck, Carmino Depoti, Joseph J. Craparo, Anthony Baldini, James Crecco, Jr., and Marino J. Oliver to perform service at Moosic on January 17, and 18, 1963. (System Case No. 9.63 MW.)

(2) Trackmen Dominic A. Lepera, John Vasilenko, Stanley Tercheck, Carmino Depoti, Joseph J. Craparo, Anthony Baldini, James Grecco, Jr., and Marino J. Oliver, who hold seniority on the Pennsylvania Seniority Division and who were available to perform this service, be allowed a wage adjustment to provide them with pay at the same rate and for the same number of hours as were consumed by employees from the Jefferson Branch Seniority Division in performing service in connection with wreck at Moosic on January 17 and 18, 1963.

EMPLOYEES' STATEMENT OF FACTS: At approximately 4:00 P. M. on Thursday, January 17, 1963, a derailment occurred at Moosic, Pennsylvania on the Pennsylvania Seniority Division.

The Carrier called the Pennsylvania Seniority Division track gang regularly assigned to the section territory on which the derailment occurred, to repair the damage to the track and roadbed. In addition, the Carrier called the employees who are regularly assigned to the track gang headquartered at Thompson, Pennsylvania, on the Jefferson Branch Seniority Division, none of whom hold seniority rights on the Pennsylvania Seniority Division.

The Carrier did not make any effort to call the claimants, each of whom is a furloughed trackman holding seniority rights and preferential employment rights on the Pennsylvania Seniority Division.

Each of the claimants was available and could have been called by telephone if the Carrier had so desired. The claimants have previously been called for work of the subject nature and have always promptly responded.

Applying this rule to the facts of record, we find that in this emergency situation, employees of the Jefferson Branch could be transferred to the Pennsylvania Division by direction of Management (Rule 11 a) and that such transfer would not create new positions or establish the right of replacement by employees of the division to which these employees were transferred (Rule 11 b). Therefore, the rule specifically allows carrier to take the action it did.

Finally, it is noted that the statement of claim of the employees in this dispute requests that claimants be reimbursed to provide them with the same number of hours at the rate of pay they would have received had they been called. Awards of the Third Division have held in cases too numerous to mention that the proper penalty for work not performed is the pro rata rate. It is the position of the Carrier that in the event the claim of the employees is sustained, claimants are entitled to no more than the pro rata rate.

OPINION OF BOARD: On Thursday, January 17, 1963, at 12:38 P. M., a derailment occurred on the main line at Moosic, Pennsylvania, on the Pennsylvania Seniority District. Regularly assigned trackmen in this district were called, and in addition, trackmen were called from the Jefferson Branch Seniority Division. The Claimants, in furloughed status, available for work with established seniority in the Pennsylvania District, were not called. The claim is for a wage adjustment to provide them with pay at the same rate and same number of hours worked by employees from the Jefferson District. The Jefferson trackmen worked from 5:00 P. M., January 17, until 10:30 A. M., January 18. Claimants were called to relieve the Pennsylvania trackmen, and did so between 6:00 and 6:30 A. M., January 18, until 5:00 P. M., January 18.

Petitioner contends it was a violation of the current agreement to utilize men outside the seniority district to perform this work, by failing to recall the available furloughed Claimants, who held seniority on the Pennsylvania Seniority District. The Jefferson trackmen hold no seniority rights on the Pennsylvania Division; that the Jefferson trackmen traveled a distance of 47 miles, taking four and one-half hours to arrive at the derailment site, whereas, Claimants lived within a radius of twenty-five miles and could have reported earlier. Seniority rules are cited and specifically Rule 4, which reads:

"Employees displaced or out of service because of force reduction will be given an opportunity to return to service or to former positions in accordance with their seniority when forces are increased or vacancies occur."

Carrier rejects the Organizations contentions and asserts that the situation was one comprising on emergency; that Carrier exercised reasonable managerial judgment; that Carrier complied with special Rule 11 by the temporary transfer of the Jefferson trackmen, notwithstanding furloughed employees on the original seniority district.

The Board is of the opinion that in the emergency situation, Carrier was permitted the use of the Jefferson District trackmen. The derailment occurred on the main line, single track territory, and did create an emergency situation. Many awards of this Board have established that Carrier may assign such employees as good judgment dictates and must be allowed great latitude when an emergency situation exists. (See Awards 13626, 12299, 12777.)

Petitioner challenges the Carrier's judgment to call the Jefferson trackmen in lieu of the Claimants, all of whom resided within twenty-five miles of

the derailment site, whereby the Jefferson crew traveled forty-seven miles and did not report until four and one-half hours after the derailment.

There is no dispute between the parties that Claimants' held seniority and were not called by the Carrier, however, the Jefferson trackmen were already intact as a crew when the emergency occurred, therefore, they did not have to be reached on an individual basis and were dispatched to the scene immediately. Claimants, on the other hand, would have to be called individually. Availability of Claimants to meet the emergent need is questionable when time is of the essence, under such circumstances. (Awards 13699, 12597.)

Rule 4 — Force Increase is applicable only "when forces are increased or vacancies occur," therefore, under the existing emergent circumstances. Carrier was not required to notify the furloughed employees.

In view of our findings on the question of emergency we do not find it necessary to comment upon the provisions of Rule 11.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 29th day of September 1965.