

Award No. 14099
Docket No. MW-14101

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
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 Trackmen Murvinton Heller, John E. Shager, Charles Wiebel, John W. Stanton, Peter Zenewicz, Arthur Smith, David Walker, Stanley J. Remyasz, Leo W. Chesko, and John W. Peskur to perform work on Saturday, July 8, 1961.

(2) Trackmen Murvinton Heller, John E. Shager, Charles Wiebel, John W. Stanton, Peter Zenewicz, Arthur Smith, David Walker, Stanley J. Remyasz, Leo W. Chesko and John W. Peskur each be allowed a wage adjustment to provide them with pay for the same number of hours and at the same rate of pay they would have received had they been properly called for work Saturday, July 8, 1961.

EMPLOYES' STATEMENT OF FACTS: At approximately 3:00 A.M. on Saturday, July 8, 1961, a derailment occurred at Herrick Center on the Jefferson Branch Seniority Division.

The Carrier called the regularly assigned track gang on the Jefferson Branch to perform work at the scene of the derailment. The Carrier also called the employees who are regularly assigned to the gang headquartered at Carbondale on the Pennsylvania Seniority Division, none of whom hold seniority rights on the Jefferson Branch Seniority Division.

The Carrier made no effort to call the claimants, each of whom is a furloughed trackman holding seniority rights and preferential employment rights on the Jefferson Branch Seniority Division.

Each of the claimants was available and could have been called by telephone. Each of the claimants lived closer to the scene of the derailment than did the employees who were called from the Pennsylvania Seniority Division. The claimants have in the past been called for emergency work and have always promptly responded.

Award 8524 of the Third Division concerned a claim for a furloughed trackman when an extra track gang was used on his section to augment the regular section gang assigned to the section. The Board, with Referee Weston, sustained the claim of the furloughed trackman with the following portion of the opinion being apropos of the situation involved in the instant dispute.

"This case (Award 8524) must be distinguished from situations where an extra track gang has been rushed to handle a short emergency or where for some other valid reason it would be impracticable to recall the Claimant. Here (Award 8524) there is no evidence in the record that any such situation existed. * * *"

In the present dispute carrier was faced with a short emergency and had valid reasons for not calling furloughed trackmen. Therefore, this claim should be denied in its entirety.

OPINION OF BOARD: Early on Saturday morning, July 8, 1961, one of Carrier's freight trains derailed at Herrick Center, Pennsylvania, blocking the single track there. Carrier called the regularly assigned track gang for the territory, and also called the regularly assigned gang quartered at Carbondale, Pennsylvania, in an adjacent seniority division.

Organization claims that Carrier should have called Claimants, who were all furloughed trackmen from the seniority division on which the derailment took place, before calling employees from another seniority division. Organization refers to Rules 2 and 4 and to Item 8 of the Agreement dated January 11, 1956. Carrier argues that because the situation was one of emergency, the Rules did not apply, and that it called the gang from the adjoining seniority division because the men were known to be available and were located at a point where material and special tools needed were available, thus saving hours which would be needed for the furloughed men, even if they had all immediately responded to call, to go to the adjacent territory for the material and return with them to the scene of the derailment.

The record supports Carrier's position, as stated above, and we will, therefore, deny 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 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 24th day of January 1966.