

Award No. 14372

Docket No. MW-15601

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, 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 Agreement when, in lieu of calling and using Chattanooga Division Foreman H. C. Bingham and Section Laborers L. D. Phillips, C. H. Burdette, J. H. Houston, A. L. Evans, W. P. Martin, Leslie Thomas and Dan Jones to perform work in connection with a derailment on their seniority district, it called and used Section Foreman B. C. Dearry and seven (7) section laborers from the Nashville Terminal seniority district to perform said work. (Carrier's File E-357-6 E-357.)

(2) Chattanooga Division Foreman H. C. Bingham and the section laborers named above each be allowed six (6) hours' pay at their respective straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: At approximately 4:45 A. M. on Wednesday, July 1, 1964, a derailment occurred at Antioch, Tennessee, on the Carrier's Chattanooga and Atlanta Division. Within thirty (30) minutes after the derailment had occurred, the Carrier had called the wrecker from Radnor and a few of the track sub-department employees holding seniority rights on the Chattanooga and Atlanta Division seniority district. At approximately 8:30 A. M., the Carrier called Section Foreman B. C. Dearry and seven (7) laborers from the Nashville Terminal's seniority district to assist in clearing the track. These employees worked at the scene of the derailment from 10:00 A. M. to 4:00 P. M.

The claimants were cut off employees in their respective classes and held seniority rights on the Chattanooga and Atlanta Division. They were available, willing and fully qualified to perform all of the work of their respective classes that was performed by the employees from the Nashville Terminal's seniority district. No effort was made by the Carrier to call and/or assign the claimants to perform the work of their respective classes.

Dear Sir:

Our letter of August 26, 1964, relative to claim of Foreman H. C. Bingham and others on account of Section Foreman B. C. Dearry and section laborers from the Nashville Terminals being called to Antioch, Tennessee, on account of a derailment July 1, 1964.

This matter was discussed in conference in this office several days ago, and it was agreed at that time, in view of your statement that the wreck occurred at 4:15 A.M. and that the wrecker arrived at 10:00 A.M., that we would investigate the matter further.

We contacted Superintendent Wear as to what time the wrecker was called, etc., and under date of September 21, he writes as follows:

'Reference your letter of September 10, concerning claim made by General Chairman Gattis on account of Section Foreman Dearry and section laborers in the Nashville Terminal called to Antioch, Tennessee, account of a derailment, working 10:00 A.M. to 4:00 P.M., July 1.

The wrecker was called from Radnor to go to this wreck at 5:15 A.M. and departed 6:02 A.M. This wreck occurred 4:45 A.M., July 1, and track was cleared and first train moved over the track at this point at 7:00 P.M., July 1.

As I was personally asked to go to the scene of the wreck, although not on this Division, I went to the scene of this wreck and upon arrival found that section laborers and foreman were needed and about 8:30 A.M. I notified Division Engineer Leinard's Chief Clerk, Mr. Griffith, to send foreman and section laborers from Nashville Terminals to Antioch to help clear up the track. He sent one foreman and six laborers from Radnor at 9:00 A.M. and they returned to Radnor at 4:00 P.M., only after some section laborers showed up from the Chattanooga Division. It is my thought this wreck constituted an emergency, and in such case, these men were called from the Terminal.'

In view of the circumstances involved, we see no basis for the claim, and it must, therefore, stand as declined.

Yours truly,

/s/ W. S. Scholl
Director of Personnel"

OPINION OF BOARD: At approximately 4:45 A.M. on July 1, 1964, a derailment occurred at Antioch, Tennessee, which is located in Carrier's Chattanooga and Atlanta Division, about 10 miles south of Nashville. The main line was blocked.

A wrecker from the Radnor Shops (Nashville) and some Chattanooga Division track sub-department employees were dispatched to the scene. At

approximately 8:30 A. M., after inspecting the situation, a Carrier official determined that more help was needed and called an already intact augment crew from the Nashville Division, an adjoining district. The crew reported to Antioch at about 10:00 A. M.

The Claimants were furloughed employees, and held seniority rights on the Chattanooga and Atlanta Division.

While it is unclear as to time, the record indicates that sometime later that day, Chattanooga Division employees were called, and they replaced the Nashville crew at approximately 4:00 P. M. The track was finally cleared at 7:00 P. M.

This claim is for 6 hours (from 10:00 A. M. to 4:00 P. M.) straight time for each of the Claimants.

Claimants, through the Organization, contend that under the terms of the Agreement they were entitled to a call because they were employees holding seniority rights on the Chattanooga Division.

Carrier contends that under the circumstances an emergency situation existed, and the Carrier official was justified in calling an already intact and functioning crew, albeit from an adjacent seniority district; and was not obligated to utilize valuable time in rounding up a furloughed crew, dispersed throughout the division — one of whom was as far away as Atlanta.

The Organization admits an emergency situation existed, but contends it was not of sufficient gravity to warrant the utilization of employees from another seniority district.

The question presented here is whether, under the circumstances, the Carrier violated the Agreement by failing to call and utilize Claimants in the first instance.

We think not.

While it may be argued that every derailment does not constitute an emergency, we are satisfied by the Organization's admission in the record that an emergency situation existed in the instant case.

Given an emergency, we find that the necessity for immediate action justified the initial calling of the Nashville crew.

In Award 13858 (Mesigh), the Board stated:

"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.)

* * * * *

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.)"

We are further persuaded by Award 12597 (Kane) involving the same parties in a similar fact situation, distinguishable only by the breaking out of a fire.

We are satisfied, absent anything in the record to the contrary, that the Carrier official acted in a prudent and good faith manner to meet the emergency. Any doubt in this regard is dissipated by the holdings of this Board that greater latitude of judgment is allowed in cases of emergency. See Award 9394.

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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1966.