



Award No. 14464

Docket No. MW-14553

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

(Supplemental)

David L. Kabaker, 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 Agreement when, on Sunday, February 25, 1962, it used employees junior to Trackmen John Vasilenko and Thomas P. Flynn to perform overtime service. (D&H Case No. 33.62 MW)

(2) Trackmen John Vasilenko and Thomas P. Flynn each be allowed eight (8) hours' pay at their time and one-half rates because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimants John Vasilenko and Thomas P. Flynn were regularly assigned as trackmen on Extra Gang No. 200, with a work week extending from Monday through Friday (rest days were Saturday and Sunday).

The factual situation was partially described in the following quoted excerpt from the undersigned General Chairman's letter of appeal:

"Because of a wreck which occurred at Moosic, employees assigned to Extra Gang No. 200 were required to work on Saturday, February 24, 1962. On Sunday, February 25, 1962, it was necessary to continue work in connection with this wreck. However, only a portion of the employees assigned to Extra Gang No. 200 were utilized on this date.

Trackmen Vasilenko and Flynn, who are senior to certain other Trackmen assigned to this gang, were not permitted to work on this date.

Trackman John Vasilenko has a seniority date of 5-13-26. Trackman Thomas P. Flynn has a seniority date of 6-1-26. The following Trackmen, who were permitted to work on February 25, 1962, are all junior in the service to the claimants: James Greco, Jr., has a seniority date of 2-9-29; Marino Oliver has a seniority date of 8-6-29; Carmine J. Bianco has a seniority date of 9-16-29; Fiorino Mussari has a seniority date of 9-16-29." (Emphasis ours.)

The junior trackmen worked eight (8) hours (7:00 A.M. to 3:30 P.M. with one-half hour out for lunch) on Sunday, February 25, 1962.

The claimants were available, willing and qualified to perform this overtime work but were not called and notified to do so.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On Thursday, February 22, 1962, at 2:18 A.M., Train WM-1 derailed at Moosic, Pennsylvania, creating an emergency. Claimants Vasilenko and Flynn, among other employees, were recalled from furlough on February 22, 1962 and worked at the scene of the derailment at Moosic through the afternoon of Saturday, February 24, 1962. Prior to quitting time on February 24, 1962, Track Supervisor Borst left the operation after having instructed the workmen to wait a few minutes to find out if there would be work on the next day, but that if he did not get back before they left for the day, to call their nearest foreman if they wanted to work on Sunday, February 25, 1962.

Claimants Vasilenko and Flynn left the job on February 24, 1962, while still under pay and after being instructed that if they wanted to work on February 25 to either wait for instructions or to call their nearest foreman. Having left before Track Supervisor Borst returned, neither claimant subsequently called the nearest foreman to determine whether or not work was available on February 25, 1962.

OPINION OF BOARD: On Thursday February 22, 1962 a train derailment occurred at Moosic, Pennsylvania. The Claimants, together with other trackmen, were recalled from furlough on February 22nd and worked, assisting a wrecking crew through Saturday afternoon February 24, 1962.

The Track Supervisor left the job on Saturday afternoon prior to quitting time to make telephone calls to his supervisors in Albany in order to determine whether work would continue on Sunday February 25th. Before leaving he instructed the Assistant Foreman to have the men wait a few minutes after quitting time or to call their nearest foreman if they wanted to work Sunday.

The Claimants left the job at quitting time, prior to the return of the Track Supervisor. They received no call for Sunday work.

There is no dispute that the Claimants were senior to the trackmen used on Sunday February 25th nor is it disputed that the Claimants were willing and qualified to perform the work.

The Claimants' position is that the Carrier violated the Agreement when it failed to call the Claimants for Sunday work and employed junior men in their stead.

It further contends that the Carrier made no attempt to call the Claimants notwithstanding the fact that each had a telephone.

The Carrier asserts that the Claimants had been informed on Saturday afternoon (February 24th) to wait on the job until the Track Supervisor returned with information whether Sunday would be worked, or to call their nearest foreman for this information.

It argues that the Claimants, having left before the Track Supervisor returned, had a responsibility to inquire from their nearest foreman as to Sunday work.

An examination of the facts in the record indicates that the issue involved in this claim can be stated as follows:

"Did the Carrier make a reasonable attempt to call the claimants for the Sunday work?"

The answer to the issue must be that the Carrier failed to make any attempt to call the Claimants.

Although the record shows that the Track Supervisor instructed the Assistant Foreman to advise the men "to wait or call their nearest foreman", there is no evidence in the record to show that these instructions were communicated to the men. This would negate the Carrier contention that the Claimants had a responsibility to call their foreman.

The record is barren of any facts that would relieve the Carrier of its obligation to call the Claimants or justify its failure to call them.

It must be noted that the Track Supervisor and the Assistant Foreman called other men in the gang as late as 10:00 P.M. Saturday night for Sunday work. This would indicate that they recognized that the obligation existed to call the men for Sunday work, notwithstanding the instructions given by the Track Supervisor to Assistant Foreman.

It is clear that the Claimants had been called on each prior day for work. In order to work Sunday, it was also necessary that they be called. The record, however, shows that the Claimants received no calls and, therefore, did not report to work. Their failure to report to work cannot be regarded as a breach of their responsibility, inasmuch as, the facts do not show that any burden was placed upon them by the Track Supervisor's conversation with the Assistant Foreman.

We conclude, therefore, that the claim must be sustained for one day's pay, at pro rata rate, in accordance with Award 10513, involving the same parties.

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 Carrier violated the Agreement.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1966.