

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Edward A. Lynch, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)**

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

(1) The Carrier violated the Agreement when it called and used Section Laborer Ritz instead of Section Laborer Wayne Prenzlin, to perform overtime work on Section No. 22 on January 12 and 13, 1964. (Carrier's File 30-20-115.)

(2) Section Laborer Wayne Prenzlin now be reimbursed for the exact amount of wage loss he sustained as a result of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On Sunday, January 12, 1964, Roadmaster J. A. Julio instructed the foreman of the gang assigned to Section No. 22, Fostoria, Ohio, to call Section Laborer E. Ritz to perform overtime work on that section. Section Laborer Ritz commenced work at 4:00 P.M. on January 12 and worked the remainder of that day and continued throughout the next day until he was released at 12:00 Midnight on Monday, January 13, 1964. Mr. Ritz was compensated for the overtime work which he performed at his time and one-half rate.

The claimant has established and holds seniority rights as a section laborer on the roadmaster's district where the subject work was performed, as of March 10, 1941. Section Laborer Ritz has established seniority rights in that class as of January 10, 1946. Both are regularly assigned members of the gang assigned to Section No. 21, Maple Grove, Ohio. Saturday and Sunday of each week are their designated rest days.

On Sunday, January 12, 1964, the claimant remained at his home. Because of the snow storm, he expected to be called. He was not called. The Carrier has admitted that it made no effort to call him. On Monday, January 13, 1964, the claimant worked the hours of his regular assignment on Section No. 21.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's appellate officer.

Copies of correspondence reflecting the subsequent handling of the claim on the property are attached hereto as Carrier's exhibits and identifiable as follows:

Exhibit B — March 2, 1964 — Denial of claim — Roadmaster to Acting General Chairman.

Exhibit C — March 12, 1964 — Appeal — General Chairman to Division Engineer.

Exhibit D — May 4, 1964 — Denial of appeal — Division Engineer to General Chairman.

Exhibit E — May 27, 1964 — Appeal — General Chairman to Assistant Chief Engineer.

Exhibit F — July 14, 1964 — Denial of appeal — Assistant Chief Engineer to General Chairman.

Exhibit G — July 28, 1964 — Appeal — General Chairman to Chief Engineer.

Exhibit H — August 5, 1964 — Denial of appeal — Chief Engineer to General Chairman.

Exhibit I — August 19, 1964 — Appeal — General Chairman to Director of Personnel.

Exhibit J — October 1, 1964 — Denial of appeal — Director of Personnel to General Chairman.

Exhibit K — December 11, 1964 — Affirmation of denial — Director of Personnel to General Chairman.

Exhibit L — January 28, 1965 — Reaffirmation of denial — Director of Personnel to General Chairman.

There is no craft holding an agreement on the Carrier's property which has the exclusive right of removing and handling snow. During snow storms, forces from all classes that are available are pressed into service to assist in handling snow so that switches and track facilities may be maintained in an operative condition. These forces have included Operating Department employees, Bridge and Building Department employees, Signal Department employees, Track Department employees, and, at times, the Supervisory forces have assisted as well.

(Exhibits not reproduced.)

OPINION OF BOARD: On Sunday, January 12, 1964 Carrier states a severe snow storm developed on the Fostoria-Bellevue area.

Men at various locations were called to clean snow from switches, walkways, etc. By midafternoon Carrier asserts the weather became progressively worse and it determined additional men were needed. Following what it asserts has been a practice — to augment forces in emergencies by calling

men most readily available — it called W. E. Ritz, who resides at Fostoria to augment the forces at Fostoria. He was readily available.

Organization asserts the Carrier should have called the Claimant, Wayne Prenzlin. Carrier said it was "not known but that Mr. Prenzlin would be needed on his own section at any time." Ritz is junior to Prenzlin.

Carrier states Prenzlin lives at Old Fort, is assigned at Maple Grove and was not subject to call by the foremen at Fostoria. It states that Ritz, who lived in Fostoria, was available on short notice for the emergency.

In Award 4948 Referee Edward F. Carter held:

"Where snow removal has become emergent, we have no hesitancy in saying that a Carrier may properly augment its maintenance of way forces with employes of other crafts and, if necessary, with persons not previously within the employ of the Carrier. It necessarily follows that under such circumstances, track forces from other sections may be utilized in overcoming the emergency in order to keep the trains moving . . ."

We will follow Referee Carter, and the many intervening Awards which similarly ruled under these circumstances, and deny this claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 1966.