

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it called and used an employe junior to E. J. Housley to perform overtime service on Saturday, February 13, 1965.

(2) Mr. E. J. Housley now be allowed eleven and one-half (11½) hours of pay at his time and one-half rate to reimburse him for the monetary loss suffered as a result of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: A short time before 10 A.M. on February 13, 1965 (a regular assigned rest day) a slide occurred one (1) mile north of Lafollette, Tennessee. Instead of attempting to call the claimant, who was the senior employe available, fully qualified and willing to have performed the subject work, the Carrier called and used Junior Machine Operator C. E. Petrey, who worked eleven and one-half (11½) hours of overtime.

The seniority status of the two men involved is as follows:

CLAIMANT E. J. HOUSLEY

Ranks 2, 3, 4 and 5..... 7-44-45
Rank 6 12-1-41

JUNIOR EMPLOYE C. E. PETREY

Rank 2 5-25-55
Rank 3 7-12-48
Rank 6 10-9-44

The claimant had complied with the provisions of Rule 30 (b) by registering his telephone number with the Carrier officer who authorized the calls in this case.

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

The Agreement in effect between the two parties to this dispute dated May 1, 1960, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On February 13, 1965, the main line about one mile north of LaFollette, Tennessee, was blocked by a rock slide.

The section gang on whose territory this slide occurred was not available, and an effort was then made to obtain the services of the district gang which normally worked the area. Neither the foreman nor the assistant foreman of the district gang was available. Mr. C. E. Petrey, the assistant foreman of the mechanized surfacing gang, had requested such work, and since he was the most readily available man, he was instructed to obtain the necessary men to be used for clearing the slide and to take them and tools in the district gang's truck to LaFollette. The assistant foreman of the district gang showed up and went with Petrey to the slide, but he was not available at the time Mr. Petrey was called.

Employees claimed that the provisions of Rule 30 were violated on account of Mr. E. J. Housley not being called and filed claim in favor of Mr. Housley for an equal amount of overtime made by Mr. Petrey. Mr. Housley is not a member of the gang on whose territory the slide occurred.

Carrier saw no basis for the claim, and it was declined.

Correspondence exchanged in connection with the file is attached, and identified as Carrier's Exhibits AA to GG.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was a regular member of District Gang No. 3 at LaFollette, Tennessee. On Saturday, February 13, 1965 (a regular assigned rest day of Claimant), a slide occurred which blocked Carrier's main line one (1) mile north of LaFollette.

Carrier did not call Claimant, who admittedly was the senior employe, but, instead, called and used a junior employe, who performed the subject work at the landslide for a period of eleven and one-half (11½) hours.

Pertinent sections of Rule we are concerned with are as follows:

"30 (b) Employes, who desire to be considered for calls under Rule 31, will provide the means by which they may be contacted by telephone, or otherwise, and will register their telephone number with their foremen or immediate supervisory officer. Of those so registered, calls will be made in seniority order as the need arises.

A reasonable effort must be made to contact the senior employe so registered, before proceeding to the next employe on the register. Except for section men living within hailing distance of

either their foreman's living quarters or their tool house or headquarters station, and for men living in camp cars when they are present at the camp cars, an employe not registered as above shall not have any claim on account of not being worked on calls."

"30 (f) The senior available men shall be given preference in the assignment of overtime work on their home sections."

Claimant had complied with the provisions of Rule 30 (b) by registering his telephone number with the designated Carrier officer.

The Employees claim Carrier violated the provisions of Rule 30 (b) and (f) by calling an employe junior to Claimant. Carrier takes the position that Claimant was unavailable due to an emergency situation, it being free to assign employes as it deemed necessary under the existing condition.

Awards of this and other Divisions of the Board have recognized that a Carrier, in an emergency, has broad latitude in assigning employes, so long as the gravity of the situation exists and as good judgment dictates. However, in the record before us, though an emergency did exist, we do not find from the facts set forth in the record that such condition was of sufficient gravity to allow Carrier to circumvent the terms of the agreement by calling an employe junior to Claimant.

The record is clear. Claimant had complied with Rule 30 (b). He was available and willing to have performed the subject work. Carrier has admitted that Claimant could have been called but was not.

We find, therefore, that Carrier did violate Rule 30 (b) and (f) of the Agreement when it failed and did not attempt to call Claimant for the service required on February 13, 1965, and in effect, wrongfully ignored the seniority status of Claimant.

Claim (1) will be sustained on the grounds that the Agreement was violated.

Claimant, who was on his regularly assigned rest day, is entitled to time and one-half rate of pay, which is what he would have earned if he had worked; therefore, Claim (2) will be allowed for eleven and one-half (11½) hours at his time and one-half rate to reimburse him for the monetary loss suffered as a result of the violation in Part (1) of 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 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 violated.

AWARD

Claim (1) and (2) sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 14th day of December 1966.