



Award No. 15846
Docket No. MW-16370

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Nathan Engelstein, 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 used B&B employes from the Cincinnati and Cumberland Valley Divisions to perform bridge repair work on May 4, 5, 6, 7 and 8, 1965 near Morely, Tennessee on the K & A Division instead of recalling cut-off employes on the K & A Division.

[Carrier's file E-357-5 E-357]

(2) B&B Helpers W. H. Ellis, C. E. Black, K. J. McGhee, L. E. Silvers, B&B Laborers D. Faulkner, Sam Lewis, B. L. Byrd, Edd Lewis, S. C. McGhee, J. E. Davis, J. L. Coleman and J. C. Sawyer each be allowed 32 hours' pay at their respective straight rates of pay and an additional 16 hours each at their respective time and one-half rates of pay.

(3) Messrs. R. R. Ross and Albert Adkins each be allowed the difference between the B&B foreman's rate and the B&B Carpenter's rate for 32 hours at straight time rate and for 16 hours at time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Claimants W. H. Ellis, C. E. Black, K. J. McGhee and L. E. Silvers have established seniority on the K&A Division as B&B helpers and are the senior cut-off employes in that class. Claimants D. Faulkner, Sam Lewis, B. L. Byrd, Edd Lewis, S. C. McGhee, J. E. Davis, J. L. Coleman and J. C. Sawyer have established seniority as B&B laborers on the K&A division and are also cut-off employes. Claimants R. R. Ross and Albert Adkins have established seniority as B&B foreman on the K&A division but, due to reductions in force are currently working in the lower pay-rated classification of B&B Carpenters and, for that reason, are referred to as cut-back employes.

At 6:40 A. M. on May 4, 1965 a car was derailed, resulting in extensive damage to a bridge at Oliver Springs on the Harriman Branch line. Instead of calling the claimants who, with the exception of Ross and Adkins, were cut-off employes to make the necessary repairs to the aforementioned bridge, the

"LOUISVILLE AND NASHVILLE RAILROAD COMPANY

Office of Director of Personnel

Louisville, Kentucky

November 26, 1965

**Mr. W. P. Gattis, General Chairman
Brotherhood of Maintenance of Way Employes
Nashville, Tennessee**

Dear Sir:

Your letter of November 23, file 1-5 K&A Divn., relative to claim that L. E. Silvers and other employes named in your letter of June 7 to Division Engineer Cox, each be paid for 32 hours at the straight time rate and 16 hours at the overtime rate of their respective positions; and that R. R. Ross and Albert Adkins, Foremen, each be paid the difference in the B&B Carpenter's rate and the B&B Foreman's rate for 32 hours at the straight time rate and 16 hours at the overtime rate, on account of a B&B gang from the Cumberland Valley Division and the Cincinnati Division seniority districts being used to repair a bridge near Oliver Springs, Tennessee, on May 4, 5, 6, 7 and 8, 1965.

As explained to you in previous correspondence and in our conference on November 17, an emergency existed and since the C. D. and C. V. gangs were organized and equipped they were rushed overnight to the bridge. As a matter of information, the bridge at Oliver Springs is on the line to Harriman. It was destroyed by a derailed car at 6:40 A.M. May 4 and it was restored to service at 6:00 P.M. May 8, during which period no trains were operated due to the line being broken.

We operate local freight trains over the Harriman Branch daily except Sunday and a through freight train with coal for the TVA Kingston Steam Plant on an average of five days per week. During the month of May, we operated 20 coal trains over the Harri-man line in addition to the local trains.

In view of the circumstances involved, the claim must stand as declined.

Yours truly,

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

Nothing further was heard about the matter until we received copy of Mr. Crotty's letter to you under date of June 29, 1965, that he intended to file an ex parte submission in the dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: As a result of a train derailment a bridge was demolished near Oliver Springs, Tennessee, at 6:40 A.M. on May 4, 1965. Carrier called a B&B gang from the Cumberland Valley Division seniority district and a gang from the Cincinnati Division seniority district to repair

the damage on May 4, 5, 6, 7, and 8, 1965. Carrier also assigned to this work some of the furloughed B&B employees on the Knoxville-Atlanta Division in whose seniority district the wreck took place. There were 38 cut-off Knoxville-Atlanta employees. Of the 22 called, 21 reported for work.

Brotherhood makes claim that Carrier disregarded the seniority rights of the furloughed employees named in paragraph 2 of the claim when it failed to call them and instead used members of B&B gangs from a foreign seniority district. It also claims that R. R. Ross and Albert Adkins, who had seniority as foremen in the Knoxville-Atlanta Division, should have been called as foremen in the reconstruction of the bridge. Because of force reduction these two men were working in the lower pay-rated positions as carpenters. Brotherhood requests compensation for them for the difference between the B&B carpenter rate of pay and the B&B foreman rate.

Carrier contends that the demolished bridge located on the main line of Cow Creek-Harriman branch, created an emergency which required immediate attention. It states that although it called furloughed members of the Knoxville-Atlanta B&B Building gang immediately, it also found it necessary to use the organized Cincinnati and Cumberland Valley Divisions B and B gangs equipped with tools because they could be put on the job promptly to restore the bridge to service. It supports its action with rule 10(a) of the Agreement which permits the transfer of employees from one seniority district to another in an emergency. Furthermore, it asserts that there was no need for foreman services.

The parties disagree as to whether the damaged bridge caused the main line or a branch line to be blocked. Nevertheless, the derailed train did demolish a bridge which disrupted service. The derailed cars were off to the side of the damaged bridge and could not be moved until the bridge was rebuilt. Furthermore the highway crossed by the bridge was not passable and the main line of the railroad was affected. This situation created an emergency which Brotherhood recognized in a letter of May 28, 1965. The General Chairman stated:

"I have no doubt that this was an emergency, but even so, the emergency did not warrant the action . . ."

In another letter, dated June 7, 1965, the General Chairman wrote:

"It is recognized that the Carrier's main track was blocked by this accident, but even so it was also known that within the time needed to notify Cumberland Valley Division and Cincinnati Division employees these claimants could very easily have been contacted and instructed to report to work . . ."

We conclude that the derailment resulted in an emergency.

The question of whether this emergency required the prompt attention and action which Carrier took when it secured employees from a foreign seniority district must now be considered. In an emergency Carrier should be permitted to exercise latitude in meeting the situation. Here Carrier called upon gangs from another foreign district that were intact because it believed they could arrive quickly to make the repairs and it called twenty-two furloughed employees individually from the seniority district where the accident happened. There is nothing in the record that gives evidence that Carrier's purpose in

the use of employes of another seniority district was to evade the application of the seniority principle and to circumvent the Agreement. Carrier acted in good faith in exercising its descretion in meeting an emergency.

For these reasons we hold the agreement was not violated.

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 13th day of October 1967.