

Award No. 16346

Docket No. MW-17298

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, 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 failed to call and use Machine Operator J. F. Nix for overtime work from 1:00 P. M., October 1 to 11:00 P. M., October 2, 1966, but called and used junior machine operators therefor. (System file 1-16)

(2) Machine Operator J. F. Nix be allowed 16 hours' pay at his time and one-half rate and 18 hours' pay at his double time rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: At approximately 11:20 A. M. on Saturday, October 1, 1966 (a rest day), Extra 446 South derailed at Hayden, Alabama on the North Birmingham Seniority District. At 1:00 P. M. that same day, the Carrier called Machine Operators J. S. Armstrong and L. Motes, as well as other track department employees, some of whom were from South Birmingham Seniority District, to clear the right-of-way and repair the track. The employees called worked continuously until 11:00 P. M. on Sunday, October 2, 1966.

The claimant machine operator, who was not called, has established seniority on the North Birmingham Seniority District in Groups 3, 4 and 5 as of July 8, 1946, whereas Junior Machine Operators J. S. Armstrong and L. Motes have established seniority, on the same seniority district, dating from October 22, 1950 and May 23, 1951, respectively.

The claimant, who had registered his telephone number with the proper Carrier officers in compliance with the provisions of Rule 30(b), was available, willing and qualified to have performed this overtime work had he been called and given an opportunity to do so.

Claim was timely and properly presented and handled by the Employees 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.

"LOUISVILLE AND NASHVILLE RAILROAD COMPANY
Office of Director of Personnel
Louisville, Kentucky

February 17, 1967

Mr. Jack Benson, General Chairman
Brotherhood of Maintenance of Way Employees
Nashville, Tennessee

Dear Sir:

Our letter of February 8, 1967, relative to claim of Mr. J. F. Nix, for 11 hours at overtime rate, October 1, and 5 hours at overtime rate and 18 hours at double time rate, October 2, 1966, on account of two junior employees being used at a wreck at Hayden, Alabama.

As stated to you in our conference on February 15, it is still our position that there is no basis for the claim, and it must, therefore, stand as declined.

Yours truly,

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

Nothing further was heard from the claim until notice was received that President Crotty intended to file an ex parte submission in the matter.

There is on file with the Third Division a copy of the current working rules agreement and by reference it is made a part of this submission.

OPINION OF BOARD: The claim arose because the Claimant machine operator was not called for work in connection with a derailment that occurred on Saturday, October 1, 1966, at about 11:20 A. M., near Hayden, Alabama, but junior machine operators were used.

Rule 30(b) of the applicable Agreement provides:

"30(b) Employees, 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 employee so registered, before proceeding to the next employee 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 employee not registered as above shall not have any claim on account of not being worked on calls."

There is no dispute that Claimant had registered his telephone number where he could be called. There is no showing that any effort was made to call him. Even though the derailment did constitute an emergency, the Carrier

was nevertheless obligated to make a reasonable effort to call the senior employee. See Awards 13474 and 15048, involving the same parties. The present dispute is clearly distinguishable from the one covered by Award 15846, cited by the Carrier. We will sustain the 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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.