



Award No. 16363

Docket No. MW-17313

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, ROCK ISLAND & PACIFIC 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 Maintenance Gang Foreman Freer to extinguish a fire along the right-of-way instead of calling and using Mr. J. J. Miller, the regularly assigned section foreman and the senior section man assigned to his gang. (System file L-126-931/7-P-217.)

(2) Section Foreman Miller and the senior section man assigned to his gang be allowed pay for one call at their respective rates of pay because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Sometime after the close of the work period on Friday, May 6, 1966, and before the beginning of the work period on Monday, May 9, 1966, a fire along the Carrier's right-of-way near Mile Post 510 was reported to the station agent at Texhoma, Oklahoma. The station agent called Maintenance Gang Foreman Freer to assist the fire department from Conlen, Texas, to extinguish the fire.

The location of this fire was on Section No. 477, to which the claimants are regularly assigned with an assigned work week extending from Monday through Friday (Saturdays and Sundays are rest days). Even though Claimant Miller and his gang are regularly assigned to Section No. 477 and, therefore, responsible for all maintenance, repair and protection of said section territory, the claimants were not called to perform this work.

Claim was timely and properly presented and handled by the Employes 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, 1938, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS:

1. There is an Agreement between the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the Carrier, and certain of its employees represented by the Brotherhood of Maintenance of Way Employees, hereinafter referred to as the Brotherhood, bearing an effective date of May 1, 1938 (as revised) on file with your Board which by this reference is made a part of this submission.

2. On May 9, 1966 a fire was reported burning on Carrier's right-of-way between Mile Post 509 plus 32 poles and Mile Post 510 plus 26½ poles.

3. In accordance with the emergency situation created by the right-of-way fire, the Agent at Texhoma, Oklahoma (who was advised of the fire) called Maintenance Gang Foreman Roy Freer who lived at Texhoma, to extinguish the fire.

4. The Brotherhood filed the instant claim with Carrier alleging claimants should have been called to extinguish the fire.

5. This claim was progressed on the property without being resolved and was submitted to your Board for determination by the Brotherhood.

6. To avoid burdening the record, Carrier has not included copies of the correspondence on the property concerning this claim as it is anticipated the Brotherhood will produce such correspondence as a part of its submission. However, Carrier will refer to various portions of this correspondence, as necessary, and will reproduce pertinent portions of same when appropriate. Carrier will also take exception in its rebuttal statement to any errors or omissions in the Brotherhood's reproduction of such correspondence.

7. The grievance procedures followed and progression of the instant dispute were timely and in accordance with the applicable rules in effect on this property and the Railway Labor Act, as amended.

OPINION OF BOARD: The record shows that on May 9, 1966, a fire was reported burning on Carrier's right-of-way near Mile Post 510.

The Carrier's agent at Texhoma, Oklahoma, called Maintenance Gang Foreman Freer, who lived at Texhoma, to assist the fire department from Conlen, Texas, in extinguishing the fire. The claim is that Section Gang Foreman J. J. Miller and the senior section laborer assigned to his gang should have been called.

We agree with the contention of the Carrier that the extinguishing of right-of-way fires and other fires is not work exclusively reserved to Maintenance of Way employees.

In Award 10079 we held that the extinction of fires threatening the property of a Carrier is work of an emergent nature and in numerous other Awards the Board has held that a Carrier may take any action deemed necessary to cope with an emergency. Awards 15597, 13316, 5766. The claim must be denied.

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 not violated by the Carrier.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1968.