

Award No. 16454
Docket No. MW-17083

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN RAILWAY SYSTEM**

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted Interstate Railroad Company employes to repair track damaged by a derailment at Keokee, Virginia, on September 7, 1965. (System File MW-23496)

(2) Extra Gang Foreman R. S. Sorah, Extra Gang Laborers G. C. Kindle and Frank South each be allowed eleven and one-half (11½) hours' pay at their respective overtime rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: At about 2:45 P.M. on September 7, 1965, a derailment occurred on the Appalachian Division at Keokee, Virginia. Instead of calling and using the claimants, who were on duty at the time, to repair the damaged track, the Carrier called and used a section foreman and two (2) laborers from another railroad (Interstate Railroad Company) who do not hold any seniority under the controlling Agreement.

Extra Gang Foreman R. S. Sorah, Extra Gang Laborers G. C. Kindle and Frank South have established and hold seniority within their respective classes on the Appalachia Division. At the time of the derailment, they were assisting a maintenance gang perform the work of changing out defective rails found by a Sperry rail test car. The claimants had been instructed not to work after dark regardless of whether or not all of the defective rails had been changed. The work of changing the remaining defective rails was scheduled to be continued the following day (September 8) but was subsequently deferred to September 9, 1965.

The claimants were not advised of the derailment and were released at their headquarters at Gate City, only a short distance from Keokee, at 8:30 P.M. while the employes from the foreign railroad continued to work throughout the night and until they were relieved by the claimants at 8:00 A.M. the following morning.

On September 8, 1965 Messrs. Sorah, Kindle and South worked at the scene of the derailment from 8 A. M. until 8:30 P. M. with a meal period of 30 minutes and for the time so worked were each paid for 8 hours at straight time rate and 4 hours at the rate of time and one-half.

Copies of letters exchanged reflecting handling of the claim on the property are attached hereto and made a part hereof identified as Carrier's Exhibits 1 through 13 inclusive.

(Exhibits not reproduced.)

OPINION OF BOARD: The sole issue to be determined herein is whether or not an emergency existed and whether or not Claimants were available to repair track damaged by a derailment.

The undisputed facts are that on September 7, 1965 at 2:45 P. M. a derailment occurred at Keokee, Virginia, Mile Post TB-7 (approximately 7 miles from Appalachia on the line Appalachia to St. Charles, Va.). At the time of the derailment, Claimants were working at Bulls Gap, Tennessee behind a Sperry rail test car removing rails discovered defective by said test car. Carrier's Division Engineer, A. S. Chambers, in his letter to the General Chairman, T. W. Danner, stated that Claimants were working approximately 50 miles away at the time of the derailment. (See Carrier's Exhibit No. 8). The Carrier's Assistant Track Supervisor had instructed Claimants not to work after dark replacing defective rails at Bulls Gap, Tennessee. The Carrier called and used an extra gang from the Interstate Railroad for the necessary work and repairs at the derailment site. Claimants worked at the scene of the derailment on the following day, September 8, 1965. (There is no contention in the record that shows that the derailment occurred on Carrier's main line).

The determination of this dispute hinges on the fact whether or not an emergency existed. Therefore, we must determine whether or not an "emergency" did exist in this dispute.

First, what is an "emergency"? This Board in Award 10965 (Dorsey) defined an emergency as an unforeseen combination of circumstances which calls for immediate action. Applying this definition to the facts at hand, we see that the derailment occurred at 2:45 P. M. In the local Chairman's letter of September 11, 1965 to the Carrier's Assistant Division Engineer (Carrier's Exhibit No. 5), he made a notation that: "Interstate men called 6:30 P. M." Nowhere in the record does Carrier dispute the Organization's allegation that the Interstate men were called at 6:30 P. M. This being so, then Carrier, by its own actions, determined that the derailment did not "call for immediate action." It is therefore the determination of this Board that an "emergency" did not exist in this instance. Thus, inasmuch as an emergency did not exist, the question of Claimants availability does not have to be determined.

Inasmuch as Carrier failed to prove its affirmative defense that an "emergency" existed by competent evidence, these claims must be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe 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 violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June 1968.