

Award Number 17798

Docket Number MW-18453

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
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 Section Foreman D. H. Mosley for overtime service from 5:00 P.M. on August 3, 1968 to 7:00 A.M. on August 5, 1968. (System File 1-17/E-265-14)
- (2) Section Foreman D. H. Mosley now be allowed 16 hours' pay at his time and one-half rate and 22 hours' pay at his double time rate account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant D. H. Mosley held the regularly assigned position of section foreman on Section 53 at Selma, Alabama, with an assigned work week extending from Monday through Friday (Saturdays and Sundays are rest days). He was scheduled to begin his vacation on Monday, August 5, 1968. Therefore, the Carrier made arrangements for Motor Car Driver E. Grayson to relieve the claimant during his vacation period (August 5 through August 16).

On Saturday, August 3, 1968, at 2 P.M., a derailment occurred at Mile 612, which required the services of the Selma section force. Although the regularly assigned section foreman (Claimant Mosely) had registered his telephone number in accordance with Rule 30(b) and was readily available, the Roadmaster called and used Motor Car Driver E. Grayson to perform the claimant's usual and customary work of calling the members of the section gang and of supervising their overtime work. Rule 30(g) reads:

"Where work is required by the carrier to be performed on a day which is not a part of any assignment it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

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.

CARRIER'S STATEMENT OF FACTS: Mr. D. H. Mosley was assigned as a section foreman at Selma, Alabama. His residence is Greenville, Alabama, 60 miles east of Selma. His days of assignment were Monday through Friday, with rest days Saturday and Sunday. He worked his regular assignment, Monday, July 29, to Friday, August 2, and at the close of work Friday, left with the understanding that he would be gone for two weeks on vacation.

About 4:00 P.M. on Saturday, August 3, the roadmaster was notified that there was a derailment of 5 racks loaded with pulpwood, 2 empty hoppers and 1 tank at Osaka, Alabama; that the main pine was completely blocked, and that he should get as many men as were available and take them to the derailment. Osaka is 117 miles south of Selma.

Since Mr. Mosely had gone to his home in Greenville, and since he had left with the understanding that he was going on two weeks vacation, he was not considered available and was not called. Mr. E. Grayson, whose regular position was that of motor car operator, and who lives in Selma, was called and used as foreman. He reported at 5:00 P.M. and the crew departed for Osaka.

A claim was filed for Mr. Mosely, based on the provisions of Rules 30(b) and 30(f). Carrier saw no basis for the claim, and it was therefore declined. Copies of correspondence exchanged in connection with the claim are attached and identified as Carrier's Exhibits "A" through "H".

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

(Exhibits Not Reproduced)

OPINION OF BOARD: The Claimant herein was regularly assigned as section foreman at Selma, Alabama. His residence is at Greenville, Alabama, some 50 to 60 miles from Selma. His work week was Monday through Friday, with Saturday and Sunday rest days. He worked his regular assignment, Monday, July 29 to Friday, August 2, 1968.

Claimant was scheduled to begin his vacation on Monday, August 5, and arrangements had been made by the Carrier for Motor Car Driver E. Grayson to relieve the Claimant during his vacation.

On Saturday, August 3, at about 2:00 P.M., a derailment occurred which required the services of the Selma section force. The Petitioner contends that Claimant had registered his telephone number in accordance with Rule 30(b) and was available, but Carrier called and used Motor Car Driver E. Grayson to perform Claimant's usual and customary work of calling the members of the section gang and of supervising their overtime work in connection with the derailment in violation of Sections (b) and (g) of Rule 30. The Petitioner contends further that if Claimant had been called at the same time that Motor Car Driver Grayson was called, he could have arrived at Selma by 5:00 P.M., which was the same time that Grayson reported for duty.

As Claimant's vacation did not begin until August 5, he was subject to call for overtime on the dates involved herein. While the derailment did, no doubt, create an emergency, a reasonable effort should have been made to call the Claimant to determine his availability to supervise the members of his gang. The record is clear that no effort was made to call him. On the facts of record, Claimant's rights were violated and the claim will be sustained.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of March 1970.