

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19702
Docket Number MW-19523

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
((Southern Pacific Transportation Company
((Pacific Lines)

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

(1) The Carrier violated the Agreement when, on February 7, 1970, it failed to call and use employees from Extra Gang 133, El Paso, Texas to perform overtime work within their designated work limits but called and used employees from Extra Gang 117 for such overtime service (System File MofW 152-726, etc. (MW file 2927)

(2) Assistant Foreman R. R. Gill and Laborers R. Jimenez, D. S. Fraire, A. Moreno, A. Jiminez, A. Valenzuela and J. S. Lechura each be allowed eight (8) hours of pay at their respective time and one-half rates plus one hour of pay at their respective double time rates because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: At about 10 AM on the claim date, February 7, 1970, two cars in a 62-car train were derailed at Ora Grande, Texas; track damage resulted and a track gang was needed to make repairs. The derailment occurred in the regularly assigned territory of Extra Gang #133, of which claimants are members; however, track gang #117 performed the repair work because claimants were not reached by Carrier.

There is no dispute between the parties that the claimants' track gang #133 had preference to the work performed by gang #117. The disputed issues are whether Carrier was confronted with an emergency and whether Carrier made adequate efforts to call claimants to perform the work.

While Petitioner challenges the fact of emergency in its submission and rebuttal, the Organization did not challenge several categorical statements of emergency made by Carrier on the property. Thus, as the Organization had opportunity on the property to deny the fact of emergency but did not, we must find the emergency to be established fact. The existence of such emergency, in turn, means that Carrier made a reasonable effort to reach claimant if only one call was made to each claimant. Award 19531 (Brent).

As regards the issue of whether claimants were called or not, we have studied the evidence most carefully but find no way of resolving the conflicting versions of the facts except in respect of one claimant. Carrier has submitted the Roadmaster's statement that: "I tried to contact above employees...by phone, but was unable to locate any of them from 10:50 am to 11:20 am." This statement does not literally say that a phone call was placed to each claimant, but we think that is the meaning to be given it. And, as previously indicated, since Carrier had an emergency, a single call to each claimant would suffice. Thus, Carrier's evidence is that it made a reasonable effort to reach claimants in the circumstances and that it thereby honored their preference to the work. In the main Petitioner's evidence is diametrically opposed. Petitioner has submitted statements from each claimant, except Assistant Foreman R. R. Gill, that he was at home but did not receive a call from Carrier.

On the record as a whole there is no evidence to contradict Carrier's evidence that it placed a call to Assistant Foreman Gill. Accordingly, we shall deny his claim. The remainder of the claims are subject to conflicting versions of the facts. Carrier's evidence shows that calls were placed to the remaining claimants, while Petitioner's evidence shows that calls were not received by such claimants. This kind of evidentiary conflict cannot be resolved by this Board and hence we are unable to reach the substantive issue of whether the Agreement was violated in respect of these claimants. Award 14947 (Ives). Accordingly, we are constrained to dismiss these claims.

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 in respect of claimant R. R. Gill. The remainder of the claims are dismissed.

Award Number 19702
Docket Number MW-19523

Page 3

A W A R D

The claim of Assistant Foreman R. R. Gill is denied. The remainder of the claims are dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. G. Killum
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1973.