NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20310
THIRD DIVISION Docket Number MW-20280

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(St. Louis-San Francisco Railway Company

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

(1) The Agreement was violated when Foreman George F. Bay, Novia G. Mead and Lee R. Bradshaw were not called and used to perform overtime service on their assigned territory on March 17, 1972 and the Carrier instead called and used Frog Welder C. C. Smith and junior Laborers R. C. Strong and E. L. Wheat for such service (System File A-9381/D-6895).

(2) Messrs. Bay, Mead and Bradshaw each be allowed four hours' pay at their respective time and one-half rates.

OPINION OF BOARD: Claimants, a Foreman, a Truck Driver-Laborer and a Trackman were all assigned to District Gang No. 130. On March 17, 1972 at approximately 10:30 P.M. a broken rail was reported on the track assigned to District Gang 130. Carrier called a Frog Welder and two junior Laborers to perform overtime service repairing the broken rail. Petitioner protested the calling of these three employes and contended that Claimants should have been called, which is the crux of this dispute.

Carrier contended that the broken rail was in welded rail territory and assumed that the services of a welder would be required to complete the repairs (this assumption proved incorrect). Carrier contended further that the broken rail was in a main line and constituted an emergency. Carrier claimed that the Frog Repairman, who's territory embraced that of District Gang No. 130 and more, and the two laborers whom he called to assist him resided about thirty miles from the location of the broken rail while the Claimant Foreman lived about fifty-nine miles away. Carrier argued that its actions were appropriate in view of all the circumstances and in its efforts to repair the broken rail promptly. Carrier cited numerous prior Awards all of which hold that in an emergency situation, in the absence of express prohibitions, Carrier has greater latitude in selecting employes than under normal circumstances.

Petitioner states that under the principle of seniority the Claimants herein are entitled to perform work arising on their assigned territory to the exclusion of others. Further Petitioner relies on Article 2 Rule 3 to support this position. That Rule provides:

"Rule 3. Rights accruing to employes under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Railway, as hereinafter provided."

The Organization avers that the above Rule has been interpreted to provide seniority right to work on the territory as well as to overtime work. Further, it is argued that two of the Claimants lived within five and one-half miles of the broken rail and were available, while the Foreman (who also was available) could have been at the site of the work about twenty minutes later than the Frog Welder. Petitioner also charges that Carrier on the property only alluded to emergency repairs and did not at any time establish that there was indeed an emergency; indeed it was only in its submission that Carrier even characterized the work as emergency since it was on its main line.

Both parties to this dispute claim that their opponents have raised new issues and facts in their submissions. We shall deal only with those matters which the parties raised on the property in accordance with our long standing practices.

In our judgement, Petitioner has made a prima facie case for Claimants, based on well established principles of seniority. Carrier can only defeat this position by its contention that in an emergency situation it has greater latitude in calling employes for repair work. An examination of the record of the handling on the property reveals that Carrier never established that an emergency existed. The only statements made by Carrier were that there were emergency repairs which should be made with the least possible delay. We have no information whatever beyond the fact of a broken rail - nothing with respect to location or significance. Carrier had the burden of proof with respect to its defense; a broken rail per se does not constitute an emergency. In Award 13738 we said:

"The record as made on the property contains no factual evidence to support Carrier's statement that there was an emergency. Whether or not there was an emergency is a conclusion which this Board can find only from facts of record of probative value. Lacking the facts, we must find that Carrier's defense of 'emergency' fails for lack of proof."

Similarly in the instant case we find no justification in fact for Carrier's argument of emergency. Seniority rights are of prime importance in the collective bargaining relationship and are tampered with at Carrier's peril. The claim must 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 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1974.