

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21222
Docket Number MW-21102

Irwin M. Lieberman, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company (Lake Region)

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

(1) The Agreement was violated when, on July 15, 1973, it assigned or otherwise permitted Arc Welder Fred Smith, Ass't. Roadmaster Abbey Rayle and Trainmaster DeCamp to repair a broken rail instead of calling and using Section Laborers L. Holland and E. O. Johnson for such service (System File MW-FST-73-11).

(2) Section Laborers L. Holland and E. O. Johnson each be allowed eight (8) hours of pay at their time and one-half rates account of the violation described above.

OPINION OF BOARD: On Sunday July 15, 1973 Carrier used an Assistant Roadmaster, a Maintenance of Way Welder, with some help from a Trainmaster to repair a broken rail near Maple Grove, Ohio. Claimants are regularly assigned Sectionmen headquartered at Maple Grove, who were on their rest day on the Sunday in question.

Carrier alleges that there was an emergency on the day in question, caused by the broken rail, which resulted in the delay of train service. Carrier asserts that it made an honest effort to secure the services of employees from the Section headquarters at Maple Grove but was unsuccessful; only at that point did Carrier resort to using supervisory personnel to correct the emergency problem.

Petitioner asserts that Carrier did not call Claimants on the day in question and that there is no evidence that they indeed were called by telephone that day. Hence, it is concluded that Carrier has not fulfilled its obligation of making a reasonable effort to reach the two Claimants.

The record of this dispute discloses that during the handling on the property no proof was submitted to support Carrier's contention that either Claimant was called. The sole evidence was a letter from the Roadmaster which stated: "...every effort was made to call sec #21 people out to change the rail. None responded to the call." It has been held repeatedly that Carrier has the obligation to make a reasonable effort to communicate with employees in situations analagous to that herein; Carrier acknowledged that responsibility in this dispute. In many such cases in the past (primarily in non-emergency situations) we have even held that one call was not sufficient to discharge Carrier's obligation, (e.g. Awards 20119, 19658, 20466 and 20534). Third party statements that "claimants were not readily available" are not supported by the record on the property. Even with the broad latitude permitted Carrier in

an emergency situation, the obligation still persists to make a reasonable effort to call the employees provided by rule for the work, (see Awards 18425, 20109, 21090 and many others), prior to resorting to other expedients. Evidence of such effort is lacking in this dispute. With respect to the monetary aspect of the Claim, Carrier did not raise any question during the handling on the property and therefore the Claim will be sustained as presented.

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:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1976.