

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21757
Docket Number MW-21651

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Denver and Rio Grande Western Railroad Company

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

(1) The Agreement was violated when Sectionmen Larry Swartwout and M. Fletcher were not called and used for overtime service from 6:00 P.M. on 4-17-75 to 7:30 A.M. on 4-18-75, during which time junior employees were used for such service (System File D-12-75/MW-7-75).

(2) Sectionmen Larry Swartwout and M. Fletcher shall each be allowed 13-1/2 hours' pay at their time and one-half rates because of the aforesaid violation.

OPINION OF BOARD: The Claimants were Section Laborers assigned to Section #6104. On Thursday, April 17, 1975, Track Supervisor Mike Romero called and used four Section Laborers assigned to Section #6104 to perform overtime service from 6:00 P.M. to their regular starting time of 7:30 A.M. on Friday, April 18, 1975 due to a derailment in the vicinity of Pine Cliff. However, Claimants, who were senior to two of the Section Laborers called, were not called for this overtime although they were available to be used. It is the position of the Employees herein that the Claimants' seniority rights were violated when they were not called on April 17, 1975 to work the overtime in question. They aver that merely because Track Supervisor Romero did not have the Claimants' home telephone numbers, this was no excuse for not contacting them. The Employees contend that Carrier was required to make a reasonable effort to contact the Claimants which they failed to do in the instant case.

X- Consistent with the findings in Third Division Award Nos. 21421 and 21445, it is the opinion of this Board that once Carrier decided to use Section Laborers assigned to Section #6104 to perform overtime service, Carrier was required to assign said overtime to the Laborers in Section #6104 on the basis of their seniority. And consistent with a well enunciated principle of this Division, Carrier was further obligated to make a reasonable effort to contact the senior employees of Section #6104 before granting junior employees the overtime opportunity.

Due to the circumstances extant in the instant claim, it is the considered opinion of this Board that when the Claimants were not called

for the overtime service on April 17, 1975 their seniority rights were not thereby violated. The derailment in the vicinity of Pine Cliff apparently created an emergency situation for the Carrier necessitating the use of Section Laborers on an overtime basis. As a result of this emergency, Track Supervisor Romero contacted those Laborers whose telephone numbers were in his possession. He did not have the Claimants' home telephone numbers. He attempted to contact Mr. Juarez, Foreman of Section #6104, but was unable to do so. There is no evidence in the record that Claimants had given their home telephone numbers to Supervisor Romero though they had given them to Mr. Juarez. Any responsibility for Romero not having the Claimants' home telephone numbers must rest with the Claimants who failed to give them to him, and not with the Carrier. Inasmuch as Carrier was faced with an emergency, we hold they were not required to make further efforts to contact the Claimants beyond what they did. Accordingly, the Carrier was justified under these conditions in not using the Claimants on an overtime basis, although they did use junior Laborers assigned to Section #6104.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1977.