

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21792
Docket Number MW-21865

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Western Maryland Railway Company

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

(1) The Carrier violated the Agreement when, on April 8, 1975, it used Terminal Foreman N. W. Miles instead of calling and using Chauffeur Richard L. Brewer to transport Carpenter E. E. Williams, together with necessary tools and equipment, to and from Mile Post 10 for the purpose of cutting down and sawing up a tree (System File 75-6/8-MG-1435).

(2) Chauffeur Richard L. Brewer shall be allowed five (5) hours of pay at his time and one-half rate because of the aforesaid violation.

OPINION OF BOARD: The central issue here was whether or not an emergency situation existed. Was there imminent danger created by the potential of a tree falling over the main line tracks? A careful review of the records confirms this; the Union does not seriously challenge this claim. Under such circumstances, supervision is vested with certain special obligations to move immediately to protect life and property. The record is replete with Awards supporting this action. Under the circumstances, the Union's claim that the Chauffeur could have been available if called cannot be given superior weight. It was, after all, speculation on the Claimant's part that he could have been at the headquarter's point in a timely manner. Considering the time of day (around 5:00 p.m.), Foreman Miles exercised his judgment in reaching and attending the problem in the most expeditious manner.

We find the claim lacks merit.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1977.

