

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22013  
Docket Number MW-22093

George S. Roukis, Referee

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

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

(1) The Carrier violated the Agreement when it assigned junior machine operators to perform overtime service at Williamsport, Maryland on August 17, 1975 instead of calling Machine Operator D. L. Shifflett who was senior, available and willing to perform that service (System File 75-11B/8-MG-1478).

(2) Machine Operator D. L. Shifflett be allowed twenty (20) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: Claimant was a roadway machine operator attached to a T&S Gang, headquartered at Hagerstown, Maryland. On Sunday, August 17, 1975, a derailment occurred at Williamsport, Maryland and Claimant's Gang was called at approximately 2:00 a.m. to work at the derailment scene. They performed service from 2:30 a.m. until 10:30 p.m. that date. Because Claimant did not have a telephone in his house nor had he notified his foreman of any other means by which he could be contacted for emergency overtime work, he was not used on August 17, 1975. He made claim for payment of all the time worked by the members of his Gang on that date.

There is no question in this case but that an emergency situation in fact existed. This Board has repeatedly ruled that in unforeseen circumstances which call for immediate action.-

"...Carrier may assign such employes as its judgment indicates are required and it is not compelled to follow normal Agreement procedures."  
(Award No. 20527)

In this case Petitioner argues that Claimant could have been contacted by the foreman or some other Carrier representative by personally driving to Claimant's home to contact him for the overtime work. Petitioner has not, however, offered any evidence to indicate or substantiate that this type of notification has occurred in the past or is "normal procedure".

We are constrained to conclude that, given the emergency circumstances which existed in this case, Carrier was not remiss when they did not send a personal messenger to contact Claimant. The claim as presented is, therefore, denied.

Because of our having reached this conclusion, it is not necessary that we address ourselves to the procedural issues which have been raised by the parties in their presentation to this Board.

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 April 1978.