

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22679
Docket Number MW-22559

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Baltimore and Ohio Railroad Company

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

(1) The Agreement was violated when, on March 8 and 9, 1977, Foreman James R. Gartner was not called for overtime service on the territory assigned to his jurisdiction and responsibility (System File NEW-1032/2-MG-1838).

(2) As a consequence of the above, the Carrier shall now allow Claimant Gartner eight (8) hours of pay at his straight-time rate."

OPINION OF BOARD: In this case we have two (2) separate claim situations involved each of which stems from the use of a Trackman rather than the Foreman for service outside of the time of the regular tour of duty.

On March 8, 1977, at approximately 6:30 A.M., a Trackman was called to make repairs to a broken bolt which was preventing a switch from being properly aligned and was delaying the movement of a train. The Trackman so used lived less than one (1) mile from the trouble scene. Claimant lived 24 miles from the scene. No attempt was made to call the Claimant Foreman.

On March 9, 1977, at approximately 6:40 A.M., a Trackman who had already reported at his headquarters location, but had not yet started his tour of duty, was utilized to provide flagging protection at a grade crossing at which an "outlawed" road train was affecting the highway crossing signals. No attempt was made to call the Claimant Foreman.

Petitioner argues in both instances that the language of Rule 24 (e-1) which reads:

"(e-1) When overtime service is to be performed on a territory assigned to a Section Gang and an Extra Gang, the Foreman of the Section Gang will be given first preference. * * *."

requires that Carrier should have made some attempt to contact the Foreman for the work in question before using the Trackman.

Carrier contends that in both instances an "emergency" existed and therefore Carrier was justified in using the Trackman who was more readily available than was Claimant. Carrier also argues that, in any event, there is no justification for the claims which ask for a 2 hour 40 minute call. Rather, if anything, there would be no liability beyond the payment of actual time consumed inasmuch as the time worked was immediately preceding and continuous with the regular assigned tour of duty of both Claimant and the Trackman who was utilized.

From the record developed in this case, it is not possible for us to determine if a bona fide emergency existed on either of the claim dates. On March 8th, Carrier elected to call the Trackman rather than the Foreman as required by Rule 24 (e-1). It is our opinion that, even with the broad latitude given to Carrier in emergency situations (and we are not convinced such a situation existed on March 8th), some attempt should have been made to contact Claimant on that date before resorting to the other employee. We will, therefore, sustain the claim for March 8, 1977. As for Carrier's contention that only one (1) hour is payable, we are unable to consider that argument because it comes to us for the first time in Carrier's submission to this Board.

In regard to the claim for March 9th, the record indicates, without contradiction, that the Trackman was already on company property - he was not called for the service in question. Therefore, it was not necessary in that instance for Carrier to call out the Foreman inasmuch as the Trackman was already on the scene. The claim for March 9th will be denied.

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

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That the Agreement was violated on March 8, 1977.

That the Agreement was not violated on March 9, 1977.

A W A R D

Claim disposed of as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1979.