NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22821

THIRD DIVISION

Docket Number MW-22822

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(St. Louis-San Francisco Railway Company

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

(1) The Agreement was violated when, on January 2, 1978, it used the Pittsburg and Greenfield track gangs to perform overtime service patrolling tracks on the territory assigned to Patrol Gang 121 to the exclusion of the members of Patrol Gang 121 (System File B-1756/D-9566).

(2) The members of Track Patrol Gang 121 (Track Patrol Foreman J. D. Craker and Assistant Track Patrol Foreman W. D. Harris) each be allowed pay at their respective time and one-half rates for an equal proportionate share of the total number of man-hours expended by the Pittsburg and Greenfield track gangs in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: On January 2, 1978, Carrier assigned Track Patrol Gang #120, headquartered at Greenfield, Missouri, to perform work on the tracks between Greenfield and Iantha, Missouri. Carrier also assigned Track Patrol Gang #122, headquartered at Pittsburg, Kansas to perform work on the tracks between Fort Scott, Kansas and Iantha, Missouri. There are four members in each gang.

Claimants, Track Patrol Foreman J. D. Craker and Assistant Track Patrol Foreman, W. D. Harris, are the members of Track gang 121. The Organization claims that the work performed by Gangs 120 and 122 on January 2, 1978 properly belonged to Claimants since the territory was regularly assigned to their patrol. The Organization argues that Carrier violated Rule 62(m) of the Agreement when it failed to assign the work to Claimants. It asks that Craker and Harris be allowed pay at their respective time and one-half rates for an equal proportionate share of the total number of man-hours expended by Gangs 120 and 122.

Carrier, on the other hand, contends that the work performed by Gangs 120 and 122 was not routine. Instead, it argues that an emergency situation existed. In Carrier's view, it may assign any necessary employe to perform emergency work. Therefore, it maintains that Claimants were not entitled to perform the work in question.

The crux of Carrier's argument before this Board is based on its contention that an emergency situation existed on January 2, 1978, excusing it from an obligation to call Claimants. However, the mere assertion that an emergency exists will not suffice. Carrier is required to supply sufficient evidence to prove that an emergency did, in fact, exist. That is, the burden of proof rests on Carrier to support its assertion. See Award No. 20310.

A careful analysis of the evidence on the property, as well as the submissions to this Board, convinces us that Carrier has failed to meet this burden. Carrier failed to establish that the overtime service to be performed was of an emergency nature. Stated simply, the events of January 2, 1978 do not amount to an emergency.

Since there was not an emergency, Rule 62(m) - Work on Unassigned Days - is the applicable rule. It reads:

> Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe.

It is uncontested that January 2, 1978, was a rest day for Claimants. The evidence conculsively establishes that Claimants performed the work in dispute Monday through Friday. That is, they are the regular employes within the meaning of Rule 62(m). Since there is no evidence that an extra or unassigned employe, who did not have 40 hours of work that week, was available to perform the work, Claimants, the regular employes, should have been assigned the work. This is the import of Rule 62(m).

Carrier also argued that it attempted to call Claimant Craker, but that he did not answer the telephone. Carrier stated that it called Craker one time. A single call in the situation here is not a reasonable effort. See Awards No. 16334, 16473, 17533. Moreover, there is no evidence whatsoever that any attempt was made to call Harris. Therefore, we cannot accept Carrier's argument that either Claimant was unavailable.

The only question that remains is the appropriate remedy. As full and final settlement of this claim, Claimants shall receive a call, 2 hours and 40 minutes, in accordance with the applicable provisions -- Rules 71(a) and 74.

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 Employes involved in this dispute are respectfully Carrier and Employes 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 in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1980.