

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23913  
Docket Number MW-23365

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees  
{ Missouri Pacific Railroad Company

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

(1) The Agreement was violated when Section Foreman P. G. Lopez, Trackman Driver J. O. Benavides and Trackmen T. W. Neal and R. Parker were not called to perform overtime service on their assigned section territory (Section 5614-Baird) on February 19, 1978 and the Carrier instead called and used the Sweetwater Section Gang (Carrier's File S 310-266).

(2) The claimants each be allowed five (5) hours of pay at their respective time and one-half rates because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Claimants are regularly assigned to Section Gang 5614 (Baird, Texas) and they work Mondays through Fridays. On Sunday February 19, 1978, Carrier used Gang 5616 (Sweetwater, Texas) to perform 5 hours of overtime work on a defective frog. The Employees contend that the work was performed within the Claimants' assigned territory.

The Organization relies upon the "Work on Unassigned Days" Rule (14, 1 (j)) because the work in question was not part of any assignment.

In the first two declinations, Carrier asserted that it called the crew closest to the damaged rail, but then, it stated (on the property) that "emergency conditions" existed and it recited certain "unsuccessful attempts" to contact others. In November 27, 1979 correspondence, certain conference discussions were confirmed, to the effect that two trains were delayed and that Carrier could not reach Claimants. The November 27, 1979 letter concluded by stating that the matter "... would be held for further discussion at a later conference". On December 14, 1979 the Employees requested a ninety (90) day extension and on December 27, 1979 Carrier agreed to the extension "... for further conference ... and further handling ..."

Thereafter, without further development of the case, it was submitted here on January 14, 1980.

There is some debate as to the jurisdiction of this Board because of the Employees' hasty submission. But we do not feel it necessary to explore that question at length. The Employees asserted certain facts in support of a claim. Thereafter, Carrier raised at least one item (unavailability) which, if established, would bar the claim. The Claimants did not submit contrary factual rebuttal while the matter was still under review on the property and thus, the claim must be dismissed for failure of proof.

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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of June 1982.