

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24576
Docket Number MW-24252

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Missouri Pacific Railroad Company

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

(1) The Agreement was violated March 20 and 21, 1980 when track forces from the Midland Valley seniority territory were used to perform overtime service on the Kansas, Oklahoma & Gulf seniority territory at Muskogee, Oklahoma (Carrier's File S 310-351).

(2) Patrol Gang Foreman D. R. Clifford and Trackman E. Boyd each be allowed sixteen and one-half (16-1/2) hours of pay at their respective time and one-half rates and seven and one-half (7-1/2) hours of pay at their respective double-time rates because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Claimants allege that the Carrier violated the Agreement when it failed to call them for work in their regularly assigned seniority district and called instead two employes from another seniority district. They seek payment in part at time and one-half rates and in double time rates.

The Claimants were regularly assigned to work as a patrol gang in the Kansas, Oklahoma and Gulf Seniority District. Their scheduled hours of work were 7:00 a.m. to 3:30 p.m. On October 20, 1980, at 4:30 p.m., the Carrier assigned all Track Department forces in that seniority district, except the Claimants, to perform service in connection with a derailment in the district. The Carrier also called two employes from a neighboring seniority district to haul rail by truck on the same project. Twenty four hours' work was required to complete the task.

The Carrier justifies the action as a proper exercise of its judgment, under the circumstances, on two grounds: The Claimants were unavailable for the assignment because they could not be spared from their regular duties of track patrol and inspection as required by FRA regulations. Moreover, emergency conditions existed, and the unavailability of the Claimants made it necessary to call the two outside employes to haul rail.

It is the Board's opinion on the whole record that the Claimants should have been called for the work. By failing to do so, the Carrier violated Rule 2 of the Agreement, which confines the Claimants' seniority rights to their assigned seniority district. They unquestionably were free of duty and available for immediate assignment at the commencement of the claimed emergency on October 20. As for October 21, we find insufficient basis in the record for the Carrier's contention that they could not be spared from their regular assignment. FRA requirements for weekly and monthly track inspection do not in our opinion, provide reasonable justification for depriving the Claimants of their right to be called away for the one day in question. In short, there is no basis in the record for excluding the Claimants from the work opportunity recognized for all other Track Department forces in the district.

Accordingly, the Claimants are entitled to monetary payment for the earnings opportunity they lost. We agree with the Carrier that they are not entitled to double time rates for any of the time claimed. Rule 14(f) requires double time rates for "continuous hours of work *** from starting time of the employee's regular shift". As the work in dispute did not commence until one hour after completion of the Claimants' regular shift, it cannot be considered as double time for them. We do not accept, however, the Carrier's contention that only straight time rates should be paid. Under Rule 14(j) time and one-half rates are applicable in these circumstances, to all time lost on the work.

As the record shows that one driver was required for 24 hours for the work in dispute, the total amount of the claim payable is for 24 hours at time and one-half rates. There is no indication, however, of the relative seniority of the two Claimants and thus no basis for ascertaining which of the two would have been called. The Board therefore concludes that the appropriate way to remedy the violation is to divide equally between the two Claimants the total amount of the claim payable.

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 respectively 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 the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Sever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1983.