

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

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

(1) The Agreement was violated when Sectionmen D. R. Finch, J. W. Miller and J. E. Asmussen were not called and used to perform overtime service on their assigned territory (Hammet Section 6190) on February 23, 1985 and the Carrier instead called and used sectionmen assigned to Glenns Ferry Section 6189 and King Hill Section 6184 for such service (System File M-133/013-210-35).

(2) Messrs. D. R. Finch, J. W. Miller and J. E. Asmussen shall each be allowed fourteen (14) hours of pay at their respective time and one-half rates."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At 1:00 AM on Saturday, February 23, 1985, an Engineer on an East-bound freight train reported water over the tracks in the vicinity of MP 388. This location is within the territory of Section 6190. The Foreman for this Section was ordered to the site to investigate the matter and noted that track ballast was washing away by water entering the right-of-way through an old culvert. He contacted the Dispatcher to have both tracks taken out of service. Several Sectionmen from adjacent Sections 6184 and 6189 were called to come to work and reported to the site within 45 minutes. They worked fourteen hours, at overtime rates, that day repairing the tracks. Claimants, who were assigned temporarily to Section 6190, were not called on the basis that they resided too far from the site of the problem and the Foreman needed assistance from employees who could respond in the shortest amount of time.

There is no question that the Agreement reserves to employees a preferential right to perform the work of their assignments when it is required on an unassigned day, the situation here. There is also no question that when an emergency exists the Carrier may utilize extraordinary measures in securing employees to undertake remedial action. Accordingly, was Carrier justified in not attempting to call Claimants to report to the site of the emergency?

Two of the Claimants reside 74 rail miles distance from the site of the problem and one resided 120 rail miles away. These distances, on their face, would seem to support Carrier's contention of unavailability. In some of our other Awards we have ruled that Claimants that resided 65, 50, 47 and as near as 33 miles from the trouble site were deemed to be unavailable.

In an attempt to minimize time delays inherent in the distance Claimants' would have had to travel from their residences to the trouble site the Organization points out that the employees used reported 45 minutes after being notified and the driving time from two of the Claimants' residences to the work site was but 45 minutes longer, ergo, an additional 45 minute delay in arriving to work on a project that took 14 hours to complete would be minimal.

This argument ignores the fact that the individuals used were at the site 45 minutes after being notified. The interval between the time of notification and arrival at the site obviously included the time necessary to dress appropriately for work on a winter night as well as the time necessary to travel to the site. On the other hand, the Claimant residing closest to the work site would have needed an hour and 35 minutes just for driving time, if he had operated his vehicle at legal limits on the interstate, to say nothing of the one living the furthest away needing 2 hours and 18 minutes.

Accordingly, on this record we do not find an Agreement violation when Carrier failed to call Claimants located 74 and 120 miles distant from the site of the emergency for the work required to correct the situation.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of February 1989.