

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company

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

(1) The Agreement was violated when the Carrier, on December 21, 1984, assigned employees headquartered at Walbridge, Ohio and working under the Coordinated Toledo Terminal Agreement dated May 22, 1984, to perform eleven (11) hours of work outside the 'coordinated terminal area' at a derailment at Pemberville, Ohio, instead of calling and assigning furloughed Chesapeake and Ohio employees (System File C-TC-2180/MG-5057).

(2) As a consequence of the aforesaid violation, furloughed Chesapeake and Ohio employees F. Thompson, S. Simmons, H. Napper, A. Clark, A. Morrison, G. Wright, R. Bennette, L. Dannenberger, D. Fisher, J. Lockhart, B. Timpe and G. Bailey shall each be allowed eight (8) hours of pay at their respective straight time rates and three (3) hours of pay at their respective time and one-half rates.

(3) In addition to the compensation referred to in Part (2) hereof, Messrs. H. Napper, A. Clark, A. Morrison, F. Thompson, S. Simmons, R. Bennette and L. Dannenberger shall each be allowed sixteen (16) hours of pay at their respective straight time rates for the Christmas Holidays (December 24 and 25, 1984) because they would have qualified for such holiday pay if they had been called to work on December 21, 1984."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 the time this dispute arose, Claimants were furloughed employees holding seniority on the Carrier's Hocking Division. On December 19, 1984, a derailment occurred on the Carrier's trackage at Mile Post 105 in Pemberville, Ohio on the Hocking Division blocking two tracks and a center siding. Only

Hocking Division employees were assigned to repair the damaged track on December 19 and 20, 1984. Track No. 1 was reopened for service on December 19, 1984. On December 21, 1984, additional forces were required to assist in repairing the remaining damaged track. Rather than calling Claimants for the additional help, the Carrier called 12 employees headquartered at Walbridge, Ohio (alleged by the Organization to be "all the forces headquartered at Walbridge") who performed 11 hours of work on December 21, 1984. One-half of the Walbridge employees were Carrier employees and the remainder were Toledo Terminal Railroad ("TTRR") employees all working under the May 22, 1984 Coordination Agreement signed by the Carrier, the Organization and the TTRR.

The Organization argues that assignment of the December 21, 1984, work to the Walbridge employees was improper since those employees were not working under the Schedule Agreement but were governed by the Coordination Agreement. The Organization seeks compensation for Claimants for the time worked by the Walbridge employees along with holiday benefits that may have accrued for certain eligible individuals as a result of Claimants' entitlement to work on December 21, 1984. Specifically, the Organization argues that under Section 2 of the Coordination Agreement, a geographic "co-ordinated terminal area" was established for the performance of maintenance of way work in the Toledo Terminal area and since the derailment in this matter at Pemberville, Ohio, was outside of that area designated by the Coordination Agreement, assignment of the work to employees working under the Coordination Agreement was improper. The Carrier argues that Section 2 of the Coordination Agreement does not place restrictions or limitations on the work area; under Section 8(a) of the Coordination Agreement TTRR employees were given seniority at the bottom of the Carrier's Hocking Division Roster and thus those employees could be used outside of the Toledo Terminal; and that an emergency existed and therefore the Carrier had greater latitude in the assignment of employees. The Organization responds that although it is correct that former TTRR employees who were headquartered at Walbridge in the coordinated terminal area were placed at the bottom of the Hocking Division seniority roster by the Coordination Agreement, none of those employees had chosen to exercise their seniority on the Hocking Division Roster but instead chose to exercise their seniority to obtain positions in the co-ordinated terminal area under the Coordination Agreement and therefore, the Walbridge employees were not working under the Carrier's Schedule Agreement. With respect to the Carrier's assertion that an emergency existed, the Organization argues that the Carrier has not sustained its burden of demonstrating the existence of such a condition noting that the work in question was performed on the third day of the derailment and by that time trains were already proceeding through the track reopened on the first day.

The relevant sections of the Coordination Agreement provide as follows:

"Section 2. This Agreement covers the performance of all work generally recognized as Maintenance of Way work within the following limits which shall

constitute the outermost limits of the greater Toledo, Ohio terminal, which shall be known as 'the co-ordinated terminal area':

-MP 114 on the C&O Columbus Sub-Division

-all property of the TTRR.

* * *

Section 8. (a) All TTRR employees on TTRR Maintenance of Way rosters will be placed on the bottom of the appropriate C&O Hocking Division Maintenance of Way seniority roster corresponding to the roster(s) on which they hold seniority on the TTRR with a C&O seniority date as of the effective date of this Agreement and ranked in the order of their existing ranking on the TTRR. Such employees will retain their existing TTRR seniority except as further provided in paragraph (d) of this Section 8."

On the basis of the record before us, we must sustain the Claim. It is undisputed that the derailment occurred outside the geographic limits of the co-ordinated terminal area established by the Coordination Agreement. The Coordination Agreement was designed to govern the allocation of work between the Carrier's employees and the TTRR employees within the specific geographic area set forth in Section 2 of the Coordination Agreement. Therefore, unless there is a specific contract provision permitting the use of the employees covered by the Coordination Agreement in areas outside of the geographic limitations of that Agreement so as to supersede rights accruing to employees under the Schedule Agreement, rights accruing to employees under the Coordination Agreement cannot be used to govern work on a derailment occurring outside of that specified geographic area negotiated by the parties in the Coordination Agreement.

The Carrier's reliance upon Section 8(a) of the Coordination Agreement does not sufficiently demonstrate that the parties intended that seniority rights accruing to employees under the Coordination Agreement extended beyond the geographic bounds of that Agreement so as to permit them to work on the derailment in question ahead of Claimants under the Schedule Agreement. While Section 8 of the Coordination Agreement placed all TTRR employees on TTRR Maintenance of Way rosters at the bottom of the appropriate Hocking Division Maintenance of Way roster with a seniority date of the effective date of the Coordination Agreement, our reading of that provision does not give the Carrier the ability to use the Walbridge employees on the derailment ahead of Claimants. The rights accruing under Section 8 of the Coordination Agreement are specifically limited by that section and we can find no language permitting widespread use of those employees in derogation of the seniority rights

of employees under the Schedule Agreement. The logical extent of the Carrier's argument would give employees under the Coordination Agreement with limited seniority rights as specified in Section 8 and their relatively recent Hocking Division seniority dates (i.e., May 22, 1984) greater seniority privileges than more senior employees under the Schedule Agreement. Without clearer direction from the parties that such a result was intended, we cannot reach the conclusion advanced by the Carrier in this case.

With respect to the Carrier's assertion that an emergency existed permitting it greater latitude in the use of its employees, while we agree with the proposition advanced by the Carrier that it has such latitude, we cannot find that a sufficient showing has been made in this record to find that doctrine applicable to this matter. First, the work at issue occurred on the third day of the derailment. Trains were proceeding through on Track No. 1 on the first day. Second, while we have no doubt that a backup continued as a result of the non-operation of Track No. 2 on the third day as asserted by the Carrier, this record does not demonstrate the degree of such a backup. As a result of the continued blockage of Track No. 2 were trains backed up a few minutes to be considered only a minor delay, or many hours to be considered an emergency? This record does not disclose the answer. All we can determine is that "some trains were being delayed." The extent of that delay is not evident. Third, the Carrier's argument that in light of the emergency nature of the derailment, it should not be required to go through recall procedures is not persuasive. The Carrier made no attempts to contact Claimants and it has not been shown that attempts to recall Claimants would have been time consuming to any sufficient degree. Moreover, the record demonstrates that one of the Claimants who lives in the area of the derailment appeared at the site and offered to work, which offer was turned down, thereby indicating that the situation was not as severe as argued by the Carrier.

With respect to the holiday pay portion of the Claim, the Carrier does not appear to dispute the allegation of entitlement to holiday pay as a proper part of the remedy. Since we have found that Claimants should have worked on December 21, 1984, those specifically named Claimants set forth in paragraph 3 of the Claim shall also be eligible for holiday pay in accord with the terms of the Schedule Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1989.