

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

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employees  
( The Kansas City Southern Railway Company

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

(1) The Agreement was violated when the Carrier used KCS Division B&B forces to perform B&B work on the L&A Division seniority district on December 11, 18, 19, 20, 21, 22, 23, 26 and 27, 1985 (Carrier's File 013.31-345).

(2) Messrs. H. H. Hoose, E. Jackson, C. D. Love, M. L. Cryer and J. D. Wells shall each be allowed thirty (30) hours of pay at their respective straight time rates and seventy-two and one-half (72 1/2) hours of pay at their respective overtime rates because of the violation referred to in Part (1) hereof."

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.

Claimants are members of B & B Gang 696 and their seniority is restricted to Carrier's Louisiana & Arkansas Seniority District. This is a pay claim for December 11, 18, 19, 20, 21, 22, 23 and 26 and 27, 1985, made on January 12, 1986. The Organization alleges Carrier assigned B & B Gangs 691 and 692, whose seniority is limited to Carrier's Kansas City Southern District, to perform repair work on Bridge B-99.8 at Adner, Louisiana. Adner is within the Louisiana & Arkansas District.

On February 27, 1986, Carrier responded:

"KCS Bridge Gang 692, with 2 members of KCS Bridge Gang 691 assisting them, worked their entire work shift on December 11, 1985 repairing KCS Bridge A-540 and on December 18, 1985 worked their entire work shift loading a car with Company material at Texarkana, Texas. B&B 692, again with 2 members of B&B 691, worked on L&A Bridge B-99.8 on December 19, 1985, ten hours straight time and 1 1/2 hours overtime; on December 20, 1985 10 hours straight time and 1 1/2 hours overtime; on December 21, 1985 12 hours overtime; on December 22, 1985 11 1/2 hours overtime; on December 23, 1985 12 hours overtime; on December 26, 1985 10 hours straight time; and on December 27, 1985 10 hours straight time.

Some time prior to claim dates a contractor working for the State of Louisiana began dredging the Flat River, which flows under L&A Bridge B-99.9. The contractor exceeded reasonable excavation under the bridge and it began to collapse. By December 19, 1985 some of the piling had come out from under the caps and we were faced with the probability of losing the entire bridge in a matter of hours. The main line was taken out of service and, because of the extreme emergency, KCS Bridge Gang 692, with 2 men from KCS Bridge Gang 691, were rushed to the site to commence operations to save the bridge. The KCS Bridge gang was available in the immediate area whereas L&A Bridge Gang 696 was located some 250 miles away, thus requiring a full day's travel to reach the site of Bridge B.99.8. We very well could have lost the bridge while B&B 696 was on the road."

The Organization did not challenge Carrier's contention that the main line was taken out of service or that substantial amounts of overtime hours were worked by the assigned crews. Neither did it contest Carrier's assertion that the KCS Gang had actually worked on KCS Bridge A-540 on December 11, 1985, and loaded cars at Texarkana, Texas on December 18, 1985, rather than working at Adner as claimed. The Organization did inquire why the days worked were non-consecutive if an emergency existed but this question went unanswered.

In progressing the Claim on first and second appeal, the Organization referred to dates in 1986, rather than 1985. The claim presented to this Board again refers to 1985. Carrier argues the Claim is therefore procedurally defective. We disagree. The Claim presented to this Board is consistent with the Claim filed on January 12, 1986. We do not consider the obvious typographic errors in subsequent correspondence fatal. At all times the parties knew the nature and extent of the Claim as well as the dates of the incident out of which it arose.

The Organization contends Carrier did not establish an emergency existed. It cites cases holding emergencies are sudden, unforeseeable events that bring operations to an immediate halt. However emergencies are not confined to Acts of God or sudden cataclysm. Slowly building faults can erupt into disaster. Here Carrier asserted it had to take the main line out of service and was faced with the possibility of losing the bridge as a result of actions of employees over which it had no control. This is not rebutted. Faced with this situation it was not unreasonable of Carrier to assign a gang in the immediate area rather than one over 250 miles away. Carrier's position that it was responding to an emergency is also supported by the fact that Gangs 691 and 692 were apparently assigned on December 19, 1985, the date Carrier contends the possibility of loss of the bridge arose rather than December 11 and 18, 1985, as claimed by the Organization. The failure to work the gang consecutive days may raise a question, but significant overtime was worked in the three days before Christmas Eve and Christmas Day. We hold Carrier, faced with what it reasonably perceived to be an emergency, did not violate the Agreement by making the assignment at issue.

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 25th day of September 1989.