

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28142
Docket No. MW-27987
89-3-87-3-566

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Agreement was violated when Foreman K. E. Bristow and Trackmen R. M. Smith, J. G. Trout, C. R. Burkhart and L. F. Garrison were not used to perform overtime service on their assigned section territory from 4:00 P.M. to 7:30 P.M. on March 25, 1986 (System File 20-33-8616/11-1580-220-494).

(2) Foreman K. E. Bristow and Trackmen R. M. Smith, J. G. Trout, C. R. Burkhart and L. F. Garrison shall each be allowed three and one-half (3 1/2) 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.

On March 25, 1986, Claimants were assigned to the Carrollton Section headquartered at Mile Post 387 on Carrier's Illinois-Division. Their quitting time was 3:30 P.M.

At about 3:45 P.M. on March 25, Carrier's Assistant Roadmaster was notified of a fire burning in the area of Mile Post 392 where new ties had been stored. Mile Post 392 is in the Carrollton Section. According to the Assistant Roadmaster:

"knowing that the Carrollton Section had gone home for the day I thought it best to get the closest available men to try to put out the fire."

He sent two trackmen and a truckdriver from the Henrietta Section who were on duty at Mile Post 405 and a fireman who was on duty at Mile Post 412 to assist the local fire department in extinguishing the blaze.

Four hundred and sixty one ties, with a value of \$7,837 were lost.

"Rule 33 - Overtime Service provides in part:

"33 - (1) - Preference To Overtime Work.
Except when employes are utilized as provided in Rule 33 - (f), employes assigned to sections, work districts, specific areas and/or locations shall be given preference in relative seniority order among employes of the gang, work district or location to overtime work to be performed within such section, district, area or location."

The Organization contends Claimants were willing and available and were entitled to perform overtime work by virtue of Rule 33-(1) but no attempt was made to call them. It further argues three Claimants live very close to their place of employment and would have been at home by the time a call came.

At the risk of belaboring the obvious, we note it has been held in Third Division Award 10079, that "the extinction of fires threatening the property of Carrier is work of an emergency nature."

Third Division Award 9394, along with numerous other Awards have dealt with assignments made in emergencies. In that Award it was stated:

"As we understand, the Awards of this and other Divisions of the Board recognize that the Carrier in an emergency has broader latitude in naming employes than in a normal situation. In an emergency it may assign such employes as good judgment in the situation dictates and it will not be obligated to exercise that care and thoughtfulness in its action which would under ordinary conditions be required."

Those principles apply here. We believe Carrier's action was reasonable. Whether or not Claimants had in fact reached home and were available for call does not appear to be the issue. Knowing Claimants had quit at 3:30 P.M., it was not unreasonable of the Assistant Roadmaster at 3:45 P.M. to assign men already on duty to fight the fire without taking the time to determine whether Claimants had yet reached their homes.

A W A R D


Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.