

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employees  
(Soo Line Railroad Company

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

(1) The Agreement was violated when the Carrier assigned Section Crew 327 from Sub-district 4-C to perform track repair work on the territory of Section Crew 308 on Sub-district 4-A at Hankinson, North Dakota on Saturday, July 12, 1986 (System File R309 #1552 ZLGW/800-46-B-267).

(2) As a consequence of the aforesaid violation, Sectionmen E. D. Zietlow, D. J. Luebke, D. Witt and J. A. Walter shall each be allowed seven (7) hours of pay at their respective 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.

Claimants are section employes in Seniority Sub-district 4A who were on furlough from their home section at the time the Claim arose.

The basic facts are not in dispute. A derailment occurred on the mainline through the Hankinson, North Dakota, yard area at approximately 7:45 P.M., on Friday, July 11, 1986. The derailment occurred within the territory of Section Crew 308 of Seniority Sub-district 4A. Carrier decided to divert traffic around the derailment using the "house track" and begin clearance work the next morning. Sometime after 8:00 A.M. the following day, more than twelve hours after the derailment, the Carrier determined that the house track was not holding up and could no longer be used to divert traffic. Carrier also determined that additional manpower was needed for the derailment. Carrier did not attempt to contact the furloughed Claimants to ascertain their

availability and offer them the work. Instead, Carrier called in members of Section Crew 327 from Seniority Sub-district 4C. Carrier did so because it believed an emergency situation existed which freed it from the normal scheduling requirements. Four individuals from Crew 327 each worked six hours.

The key issue in this matter is whether the foregoing facts constitute an emergency within the meaning of the Agreement. In this regard, it is noted that the Carrier asserted on the property that the house track by Saturday morning became "impassable" after trains had been detoured on it Friday night. The Organization never rebutted this. Nor did they put forth convincing evidence that it could have and should have been known on Friday that the house track would not have held up. It is conceivable that the Carrier reasonably anticipated on Friday that the track would serve as a viable alternative but that the nature of the detoured traffic along with other circumstances caused an unforeseeable result.

In short, the Organization failed to rebut the Carrier's assertion that there was no passable track available on Saturday. When the main line is blocked and no alternative track can be utilized, an emergency existed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1991.