

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29742
Docket No. MW-29654
93-3-90-3-656

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employees
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Foreman D. R. Morgan, Assistant Foreman C. Grimes and Truck Driver D. W. England to repair a broken rail at Mile 10.5 on the Nashville Seniority District, Memphis Line on September 24, 1989 [System File 11(63)(89)/12 (89-990) LNR].

(2) As a consequence, Claimant's R. A. Foster and J. M. Roberts shall each be paid five (5) hours' pay at their respective overtime rates of pay."

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 employe 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 have established and hold seniority as Track Repairmen and were working under the supervision of Section Foreman Morgan at the time of this dispute. The Claimants' workweek was Monday through Friday with Saturday and Sunday as assigned rest days. Both Claimants reside at Lewisburg, Kentucky, which is located approximately 70 miles from their headquarters. The Claimants commute to and from their residence on a daily basis.

On Friday, September 22, 1989, subsequent to the end of their normal workweek, the Claimants returned home to observe their rest days. In accordance with Rule 30, the Claimants had provided the Carrier with their telephone numbers in the event the Carrier should need to contact them.

On Sunday, September 24, 1989, Foreman Morgan was called to repair a broken rail at Mile 10.5 on the Nashville Seniority District, Memphis Line. Rather than calling the Claimants, the Foreman called a Truck Driver and an Assistant Foreman to perform the repairs. They worked five and one-half hours overtime in repairing the broken rail.

The Organization filed a claim asserting that the Claimants were entitled to be called to perform the overtime work on Sunday, September 22, 1989, and that the Carrier was in violation of Agreement Rules 30 and 31 when it failed to do so.

Agreement Rules 30 and 31 read in pertinent part as follows:

"RULE 30. OVERTIME

30(b) Employees, who desire to be considered for calls under Rule 31, will provide the means by which they may be contacted by telephone or otherwise, and will register their telephone number with their foremen or immediate supervisory officer. Of those so registered, calls will be made in seniority order as the need arises.

A reasonable effort must be made to contact the senior employe so registered, before proceeding to the next employe on the register. Except for section men living within hailing distance of either their foreman's living quarters or their tool house or headquarters station, and for men living in camp cars when they are present at the camp cars, an employe not registered as above shall not have any claim on account of not being worked on calls.

* * *

RULE 31. CALLS

The basis of payment in Rule 30(a) will also apply to time worked which is not continuous with a regularly assigned work period, with a minimum payment of 2 hours and 40 minutes at the time and one-half rate. Employees called for service on regular rest days and holidays and for work outside their regular assignment on regular work days, will be paid from the time they are notified to report until the time they return to their headquarters station."

The Carrier denied the claim and the Organization appealed to the Senior Manager Labor Relations on November 29, 1989. In its denial Carrier asserted that the broken rail constituted an "emergency," and that it had the right to "expedite emergency situations." Therefore, the Carrier maintained that, under the circumstances, it was not obligated to contact the Claimants. Following a conference held on May 22, 1990, Carrier's declination of the claim was reaffirmed by letter dated July 13, 1990.

The essence of this dispute is whether the broken rail constituted an "emergency." The Carrier submits that it was faced with an emergency when a "serious rail flaw" was discovered at Mile Post 10.5. Therefore, according to the Carrier, the Foreman of the affected territory was instructed to call the two employees who lived closest to the site in order that the repairs could be made in an expeditious manner. Thus, the Carrier denies that any violation of the Agreement occurred.

According to the Organization, the Carrier did not assign the Claimants to overtime work which they were contractually entitled to perform. The Claimants were "available, ready, willing and able" to perform the work had the Carrier contacted them. The Organization maintains that the Carrier admitted that it failed to call the Claimants and defended its position claiming that an emergency existed. However, the Organization asserts that the Carrier did not meet its burden of proving that the broken rail at Mile Post 10.5 constituted an emergency.

The positions in this dispute are quite straightforward. Carrier maintains that the situation constituted an emergency. The Organization asserts that the circumstances did not constitute an emergency, and that the Claimants should have been afforded the overtime opportunity.

Had the circumstances in this case constituted an actual emergency, the Carrier would have been well within its rights to contact the most accessible employees to perform the repairs in the most expeditious manner. If the circumstances did not constitute an emergency, then the Claimants, who normally commute on a daily basis should have been called to perform the repairs.

The Board has carefully reviewed the evidence properly before us and we find Carrier has not supported its protestation that the situation at issue in fact constituted an emergency. The Claimants qualified for the call under Rule 30(b). Accordingly, Carrier did, indeed, violate the Agreement when it failed to notify the Claimants. A delay or an inconvenience does not necessarily constitute an emergency, and the Carrier neglected to prove that an emergency existed. (See Third Division Awards 13738, 20223, and 23853. The Claimants, who normally commute on a daily basis, and, cannot be considered to have been unavailable, should have been contacted to work the overtime and make the necessary repairs. Accordingly, the Claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 12th day of August 1993.