

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30285
Docket No. MW-28969
94-3-89-3-382

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
(
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)

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

- (1) The Agreement was violated when the Carrier used Joplin Division forces to perform B&B work on the Eastern Division seniority district from January 23, through March 17, 1988. (Carrier's File 880276 MPR)
- (2) Messrs. J. C. Boyer, C. R. Caton, J. W. Penrod, D. L. Fall and S. Parastar shall each be allowed eight (8) hours pay per day at their respective rates and any overtime and holiday pay 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 employee 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.

The basic facts are undisputed. On January 26, 1988, at approximately 10:50 A.M., the Carrier experienced a major derailment of twenty-one cars on the Mermac Bridge near Sedalia, Missouri. The derailment took the double mainline completely out of service for three days. After three days, the "B" portion of the bridge was opened. In order to expedite repairs, the Carrier assigned B&B Gang 3703 to the project. The derailment was on their seniority district (the Eastern District). The Carrier also assigned Gang 3705 from a neighboring seniority district to assist. The Claimants were furloughed members of the Eastern District.

The Carrier defends the use of Gang 3705 on the basis that the derailment constituted an emergency and on the basis of Rule 6A. It also raises a procedural objection claiming that the Organization initially filed the claim for the wrong date and wrong bridge. A correction was made later during the handling of the claim.

First, it is the conclusion of the Board that there is no merit to the Carrier's procedural argument. It is apparent that in spite of the factual errors in the claim, the Carrier knew exactly what derailment the Organization was talking about. In fact, it responded in detail several times at various levels. There simply was no confusion or prejudice to the Carrier.

As for the merits, the Board notes that the Carrier's contentions regarding Rule 6A were not made on the property; therefore, they will not be considered here. As for its contention that the use of the off-seniority district was justified because the derailment constituted an emergency, there is no basic dispute about this. The real issue is how long the emergency lasted. The Carrier contends that the entire (approximately) seven-week period was an emergency. The Organization argues that the emergency ended three days after the derailment when one side of the main line was opened.

There is no doubt that an emergency existed in the sense that the Carrier wanted to restore both sides of the double mainline to service as soon as possible. However, the massive scope of the project as well as the lengthy period of time required to complete it made it imminently practical to recall the furloughed Eastern District employees. If the project was of a lesser scope involving less time, it could be said that it was not practical to recall the Claimants. However, the use of Gang 3705 for nearly seven weeks to the exclusion of furloughed Eastern District employees is too long to be justified on the basis of immediacy and urgency.

On the other hand, the need for expedition did not pass after only three days. Considering this and the fact it takes time to recall employees, it is the conclusion of the Board that the Claimants should have been recalled and are entitled to lost earnings from February 10 through March 17, 1988, or the date of their eventual recall, whichever was sooner. The Parties are directed to make a joint check of the records to determine (1) when the Claimants were out of work and (2) the straight time and overtime hours worked on this project by Gang 3705. The Claimants each are entitled to the average per man straight time and overtime earnings of Gang 3705 for any period of furlough between the dates of February 10 and March 17.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of July 1994.