

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31231
Docket No. MW-30892
95-3-92-3-744

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Southern Pacific Transportation Company
((Eastern Lines)

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

- (1) The Agreement was violated, on July 16, 1991, when the Carrier assigned San Antonio Division B&B Gang 02 to install drainage pipe at Mile Post 34.97 between Victoria and Cuero, Texas, instead of assigning Houston Division B&B forces to perform the work (System File MW-91-127/503-68-A SPE).
- (2) As a consequence of the violation referred to in Part (1) above, Houston Division B&B Foreman S. S. Gibson, Assistant Foreman A. H. Law and Carpenters C. A. Bush, L. Sosa, W. S. Donald and H. T. Kirkman shall each be allowed eight (8) hours' pay at their respective straight time 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 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 Claimants in this case all hold seniority in the Carrier's Bridge & Building Department and were assigned on the Houston Division at the time of this dispute.

On July 16, 1991, the Carrier was notified by the Roadmaster that the bridge located at Mile Post 34.97 in the Houston Seniority District was in need of repair. After the Roadmaster was informed that the Houston B&B Gang was not available, he called the San Antonio B&B Gang. Since they were in the vicinity, they went to inspect the bridge and determined that the bridge was unstable because of a bad dump. Considering this an emergency situation, the Carrier authorized the San Antonio Gang to perform the needed repair work. The work involved building a frame bent under the bridge for support and then on the next day, installing a drain pipe and back filling the area with dirt.

The Organization filed a claim on behalf of the Claimants alleging that although the San Antonio Gang needed to perform the emergency repair work on the bent, the Houston Gang could have easily installed the drain pipe and back filled the area the next day. The Organization argues that the drain pipe was not connected in any way to the alleged emergency repairs performed to the frame bent on the previous day.

The Carrier denied the claim arguing that this was an emergency situation and that the Houston Gang was not available at the time to perform the needed work. Furthermore, the Carrier contends that the Claimants were fully employed on both dates in question and therefore, suffered no loss.

This Board has reviewed the record in this case and we find that the Organization has not met its burden of proof that the Carrier violated the Agreement when it assigned the San Antonio Division B&B Gang to perform the work involved in this case. The record clearly demonstrates that there was an emergency situation which required that repairs be made to the bridge. The Carrier has shown that the bridge was unstable and that a frame bent had to be built under the bridge to help support it. It is not necessary for the Carrier to wait until a derailment occurs for it to declare an emergency. The conditions here constituted the type of emergency envisioned by the Agreement.

Since an emergency existed, the Carrier had more flexibility in which employees it could assign to perform the work required. In this case, we hold that there was no violation of the Agreement when the Carrier assigned the San Antonio Division employees to perform the emergency work. Consequently, the claim must be denied.

Form 1
Page 3

Award No. 31231
Docket No. MW-30892
95-3-92-3-744

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.