

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35085
Docket No. MW-31085
00-3-93-3-80**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, on February 7, 1992, the Carrier assigned San Antonio Division Track Foreman R. L. Mrazek and R. Ricketts to install track panels between Giddings and Dimebox, Texas on the Dallas-Austin Division, instead of assigning Dallas-Austin Division Foreman T. Pledger to perform the work (System File MW-92-60/MW 92-28 SPE).
- (2) As a consequence of the violation referred to in Part (1) above, Dallas-Austin Division Foreman T. Pledger shall be allowed eleven and one-half (11½) hours' pay at his respective time and one-half rate.”

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 were given due notice of hearing thereon.

This case involves a claim by the Organization that the Carrier violated the Agreement on February 7, 1992, by calling and assigning Dallas-Austin Seniority District Foremen to perform service, including overtime, replacing approximately 500 feet of fire damaged track on the Hearne District of the Dallas-Austin Division. Under the Seniority Rules, employees' seniority rights for purposes of establishing priority for vacancies are restricted to the districts defined in the Rules. The Claimant holds seniority in the Dallas-Austin Division, where the subject vacancy occurred. The employees who were called and assigned to perform the service each held seniority in the San Antonio Division.

The Organization asserts that the Carrier, without justification, gave work to the San Antonio District employees. According to the Organization, because the Claimant holds seniority as a Foreman within the Roadway Track Department on the Dallas-Austin Division Seniority District, and the assigned employees do not, he was contractually entitled to be called.

The Organization disputes the Carrier's claim that the Claimant was unavailable to perform the work in question. It argues that the Carrier provided no probative evidence that it attempted to contract the Claimant to offer him the assignment. According to the Organization, therefore, the Claimant is entitled to 11 and one-half hours of pay at the overtime rate.

The Carrier, on the other hand, asserts that its assignment of the work was reasonable under emergency conditions, and therefore was proper. The Carrier states that on February 5, 1992 there was a serious derailment south of Dallas that necessitated the reassignment of the Carrier's employees in the Dallas-Austin Division. To compensate, the Carrier explains, it required its San Antonio Division employees to work off their district and cover the southern portion of the Dallas-Austin Division.

The Carrier asserts that two days later, on February 7, 1992, another emergency situation developed - a fire on the main track between Dimebox and Giddings, Texas, damaging 500 feet of ties and rails. Consequently, the Carrier immediately needed employees to lay replacement track panels, and it dispatched two Foremen from a San Antonio track gang one hour away. The Carrier asserts that it believed, in good faith, that the Claimant was unavailable, 200 miles away at Eagle Lake, Texas.

The Carrier asserts that unless it is restricted by agreements, it may determine the manner in which work and operations are performed in the best interest of efficiency and economy. It maintains that this record contains no evidence of any such restrictions. Moreover, according to the Carrier, in an emergency, it must be allowed great latitude in

making on the spot judgments that should not be upset even if later, "more leisurely reflection" demonstrates that the judgments were erroneous. The Carrier maintains that it believed in good faith that the Claimant was more than 200 miles away. It argues that under the circumstances it acted in good faith when it called and assigned the work to employees who were only one hour away. The Carrier states that without proof that the Claimant was available and that it acted in bad faith, it cannot be held liable for a violation of the Agreement.

After carefully reviewing the record evidence, we have determined that the Organization's claim must be sustained. The Carrier's conclusion that the Claimant was unavailable, while made in good faith, lacked an evidentiary basis. We understand that the Carrier was confronted by an emergency. Nevertheless, we find that the Carrier was required to make a greater effort to follow its Seniority Rules.

Based on the foregoing, the Claimant shall be compensated for eleven and one-half hours at the straight time rate. We have considered to the Organization's argument that the Claimant should be paid at the overtime rate. We think the better practice on overtime claims of this type is to award straight time pay.

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 15th day of November, 2000.