

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36982
Docket No. MW-36016
04-3-00-3-119

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier called and assigned employes who held no seniority on the Toledo Seniority District to perform overtime service (working a derailment) at Mile Post 249.4 on the Chicago Mainline at Danbury, Ohio on April 21 and 22, 1997, instead of calling and assigning Toledo Seniority District employes D. W. Brink, J. R. Mowka, R. Issac, C. J. Baughman, C. R. Charles, T. J. Coon, J. B. Manning, J. L. Dazley, M. J. Aberl and W. L. Tonoff to perform said work (System Docket MW-5444).
- (2) As a consequence of the violation referred to in Part (1) above, Toledo Seniority District employes D. W. Brink, J. R. Mowka, R. Isaac, C. J. Baughman, C. R. Charles, T. J. Coon, J. B. Manning, J. L. Dazley, M. J. Aberl and W. L. Tonoff shall be allowed “. . . all hours of pay at the time and one-half rate and double time rate, all credits towards vacation and all other benefits for April 21 & 22, 1997.”

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.

On April 21, 1997, a derailment occurred on the Chicago Mainline at Mile Post 249.4 at Danbury, Ohio, which blocked east and westbound traffic. Further, because hazardous materials were involved, local authorities implemented evacuation procedures. The Carrier utilized employees from a nearby Production Gang to restore track service. This claim asserts that in doing so, the Carrier improperly assigned employees who held no seniority on the Toledo Seniority District to work the derailment.

The Carrier states in its January 20, 1999 letter that given the particular circumstances, “[i]n view of the obvious emergency . . . the Carrier had the right to use the fastest means available to restore service.” We agree. This derailment was clearly an emergency - “[a]n unforeseen combination of circumstances which calls for immediate action.” See Third Division Award 22755. “. . . [I]t is well established that the Carrier, in an emergency, has broader latitude in assigning work than under normal circumstances; in an emergency Carrier may assign such employees as its judgment indicates are required and it is not compelled to follow normal Agreement procedures.” See Third Division Award 20527. The Carrier’s assignments to clear the emergency caused by the derailment thus did not violate the Agreement.

Form 1
Page 3

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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 12th day of May 2004.