

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37948
Docket No. MW-36707
06-3-01-3-257

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Southern Pacific welding gang and McFarland Section Gang employes to perform work (surface track, install track panels, remove track structure elements and cutting and welding work) at a derailment site between Mile Posts 117.50 and 117.75 on the Salina Subdivision of the Kansas Division on December 31, 1999, instead of Kansas Division Section Gang Foreman H. W. Callahan, Truck Driver D. C. Selbe, Sectionman D. L. White and Kansas Division Welder D. D. White and Welder Helper F. D. Walters (System File W-0016-151/1227813).
- (2) As a consequence of the violation referred to in Part (1) above, “*** Claimants Callahan, Selbe, White, White, and Walters must be allowed compensation for all hours worked by these Southern Pacific Gangs on December 31st 1999. This compensation must be allowed at their respective Group 14 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 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.

Review of the on-property record shows that the basic facts are not in dispute. In its initial denial of the claim dated April 24, 2000 the Carrier stated:

“Obviously this was an emergency situation with the main line out of service. We attempted to contact everyone on the UP Kansas seniority and had very poor response due to the holiday. After failing to get adequate support from the UP Kansas seniority personnel, we contacted these individuals at McFarland on the old SP Territory to assist.”

The key assertions contained in the Carrier’s denial were never effectively refuted by the Organization on the property. Thus, they must be accepted as having been sufficiently proven and not in need of further support.

It is well settled that emergency situations allow carriers to exercise wider latitude in having necessary derailment recovery work performed. See Third Division Awards 13858 and 30674, as well as Awards cited therein.

Given the facts of this record, we find that the Carrier did not violate the Agreement. The claim, therefore, must be denied.

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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 19th day of September 2006.