

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43581
Docket No. MW-42387
19-3-NRAB-00003-180468
NRAB-00003-130402**

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(Union Pacific Railroad Company (former Chicago
and North Western Transportation Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call and assign Interdivisional Tie Gang 2896 employees J.R. Lilly, M.W. Schmidt, D.L. Fiore and J.M. Schrock to perform track repair work (replacing ties) on the Trenton Subdivision between Mile Posts 364.80 and 367.80 on May 24, 25, 29, 30, 31 and June 1, 4, 5, 6 and 7, 2012 and called and assigned Kansas/Nebraska Division Maintenance Gang 4758 employees thereto (System File G-1205C-52/1574616 (CNW)).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J.R. Lilly, M.W. Schmidt, D.L. Fiore and J.M. Schrock shall now be compensated “*** for an equal and proportionate share of 488 man hours of straight time and 185.5 man hours of overtime, for the hours that the Kansas/Nebraska Division employees spent performing Maintenance of Way work on district T-2, at the applicable 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.

This dispute centers on the Carrier's actions following a derailment on May 20, 2012 from Milepost 364.75 to Milepost 367.91 on the Trenton Subdivision, resulting in track damage impacting three miles of main line track. The derailment destroyed 4877 cross ties, the North Switch at Allerton, five road crossings and one rail lubricator.

The Organization asserts that the Carrier violated the parties' Agreement when it assigned its 4758 online gang to perform the work necessary to repair the damage rather than Claimants, who were assigned to Interdivisional Tie Gang 2896. The Organization maintains that Claimants were the regularly assigned maintenance and interdivisional gang employees for this territory.

The Carrier asserts the affirmative defense that the existence of an emergency gave it the right to utilize the 4758 online gang employees to perform the work at issue. In particular, the Carrier points out, the Agreement does not restrict its right to have work customarily performed by employees included within its scope performed by a contractor in emergencies that affect the movement of traffic when additional forces or equipment are required to clear up emergency conditions in the shortest time possible. Clearly, the Carrier adds, if it can use individuals who are not its own employees in such situations, it has the latitude to use its own employees and equipment to address a true emergency event. See Third Division Award 20257.

Here, the Carrier states, the derailment directly affected traffic movement, as

train speeds were reduced from 55 miles per hour to 10 miles per hour, and the Carrier was forced to use a siding to route trains around the derailment. This limited the main line's efficiency and delayed service to customers. The Carrier asserts that it was imperative for it to return the track to normal operation as quickly as possible. Moreover, the Carrier states, the derailment occurred in southern Iowa, so it questions how the use of the Claimants' gang, headquartered out of St. Paul, Minnesota, would have been better able to address the situation than the 4758 online gang, which was located in much closer proximity to the derailment site.

Our review of the record demonstrates that the Carrier was faced with an emergency situation as has been defined in numerous awards. See Third Division Award 20527, where it was held that an emergency is an unforeseen combination of circumstances which calls for immediate action. It has also been held, see Third Division Award 20257, that in an emergency the Carrier may assign such employees as its judgment indicates are required and it is not compelled to follow normal Agreement procedures.

The Board has recognized, see Third Division Awards 31676 and 41169, that a derailment is the sort of event for which, by definition, a carrier cannot plan in advance. Especially where, as here, the derailment damaged track and interfered with the Carrier's ability to service its customers, an emergency did exist which justified the Carrier's decision to forego notice and deploy its forces to as its judgment dictated to remedy the situation as quickly as possible. The Carrier's action did not violate the Agreement. The claim will be denied.

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 27th day of March 2019.