

PUBLIC LAW BOARD NO. 2206

AWARD NO. 52

CASE NO. 50

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement January 21, 1979, when failing to call Sectionman F. Hernandez to perform work of changing a broken rail at mile post 245.5 on the 17th Sub-Division, a part of the Snake River Section and instead called Sectionmen Phil Byrd and Don Watts, who are assigned to the Kahlotus Section. (System File P-P-421C.)
- (2) That Sectionman F. Hernandez be allowed sixteen (16) hours at his punitive time and one-half rate of pay, a total of \$169.68.

OPINION OF BOARD:

At the time of the incident at issue, Claimant was employed as a Sectionman on Carrier's Snake River, Washington section. On Sunday, January 21, 1979, at about 10:30 AM, Track Inspector A. Coronado discovered some broken rail on the main line trackage in the vicinity of mile post 245.5, within the territory encompassed by the Snake River Section.

Track Inspector Coronado was not able to contact Snake River Foreman M. F. Benson. He did call some other numbers of that section by telephone, but Claimant was not called. Mr. Coronado did not contact a sufficient number of Snake River sectionmen to constitute a full crew. He therefore summoned additional help from the adjoining section at Kahlotus. As a consequence of

the foregoing, the Organization filed claim on behalf of Claimant. Claim was appealed through Carrier's highest appellate officer and was denied at every level.

The applicable rule at issue is Rule 24 of the Agreement between the parties. Rule 24 reads as follows:

RULE 24. FORTY HOUR WORK WEEK.

I. Work on Unassigned Days.

Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.

It is unrefuted on the record that Inspector Coronado had Claimant's telephone number and that Claimant was at home, available and willing to work, on Sunday, January 21, 1979--a regular rest day for Claimant's section force. Carrier asserts, and a memo from Coronado confirms, that the sole reason for not calling Claimant was his distance from the site of the broken rail. The record shows Claimant was some 40 miles away while those employees called were between 20 and 30 miles away. The difference in travel time for Claimant and the others who were called does not appear to be significant. Moreover, Carrier's argument concerning the pressing nature of an emergency is less than persuasive. As we held in our Award 3-20223, a broken rail does not ipso facto constitute an emergency. We conclude that the unjustified failure to contact Claimant constituted a clear violation of Rule 24 of the Agreement. Accordingly, Part (1) of the claim is sustained.

With respect to damages accruing (Part (2) of claim) we refer to our numerous previous awards on this matter (for example 3-19898, 3-20041; 3-20412; 3-20633; 3-21340) in which we found that overtime damages shall be awarded

where the work in question was performed on an overtime basis. Part (2)
of the instant claim is, therefore, also sustained.

AWARD

Claim sustained.

J. H. Funk
Employee Member

Walter H. H. H. H.
Carrier Member

Dana E. Eischen
Dana E. Eischen, Chairman

Date: April 20, 1982