

Public Law Board No. 2630

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees

and

The Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

1. Carrier violated Rule 24 and other Agreement provisions when using Leroy Bass, Machine Operator for overtime work when assisting in surfacing track from 3:30 to 7:30 p.m. October 18, 1977, near Chester, Pa., work which accrues by Rule 1(d) to track.
2. Richard Simmons, Trackman, being qualified and available, should be compensated for four hours at the appropriate Trackman rate.

FINDINGS:

It is Petitioner's position that Rule 1(d) was breached when Carrier assigned a machine operator, Leroy Bass, to help surface main track at Chester, Pennsylvania. Rule 1(d) prescribes

that track maintenance work will be performed by track forces.

The work in question was performed at MP 12.2 by Mr. Bass from 3:30 to 7:30 p.m. Foreman Davis had been instructed at 3 p.m. to investigate the track condition at that location after a report had been received that it was unsafe. At about 3:30 p.m., Foreman Davis determined that the track at MP 12.2 required lining and surfacing.

Mr. Davis's force had been released from duty at 3 p.m. and, according to Carrier, Machine Operator Bass was selected to perform the work since he and not Mr. Davis' gang was readily available.

Claimant, a trackman and member of Foreman Davis' force, had been released from duty at 3 p.m. and was on his way home at the time that it was determined that the track's condition called for immediate repair.

An unsafe track condition manifestly constitutes an emergency situation. It was not unreasonable or a rules violation therefore for Carrier to use the only employe readily available to perform the necessary repair work. Under the circumstances, Carrier was not obligated to search for trackmen who had been released from duty and were on their way home in order to have them rather than an available machine operator attend to the work. A

dangerous track condition had to be repaired in the quickest time possible.

On the basis of these facts, the claim will be denied

AWARD: Claim denied.

Adopted at Baltimore, Maryland, *August 15*, 1981.


Harold M. Weston, Chairman


Carrier Member


Employee Member