

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 5

Carrier File No. AMWB 87-12-28

Organization File No. S-S-430

STATEMENT OF CLAIM

1. The Agreement was violated when Laborer E.M. Fox was not called and used to perform overtime service on his assigned rest days on Saturday, August 1 and Sunday, August 2, 1987 (System File S-S-430/AMWB 87-12-28).

2. Laborer E. M. Fox shall be allowed thirty (30) hours of pay at his overtime rate.

F I N D I N G S

Claimant is a Laborer assigned to Concrete Tie Gang #8 with headquarters in outfit cars near Libby, Montana. His regularly assigned work hours were from 7 a.m. to 4 p.m., Monday to Friday, with Saturday and Sunday as rest days. Upon completion of his work on Friday, July 31, the Claimant left the work site to observe his rest days at home.

A derailment with damage to tracks occurred at a nearby location. While the Organization alleges that this occurred prior to midnight on July 31, the Carrier's records show the accident occurring at 9:40 a.m. on August 1.

In what the Carrier claims to be an emergency, employees of Concrete Tie Gang #8, including one or more Laborers with less seniority than the Claimant, were pressed into service for repair work. The work involved extended hours on Saturday or Sunday.

The Organization claims that failure to notify the Claimant of the overtime opportunity violated his seniority rights. The Carrier states that the supervisor properly responded to the call for emergency work by assigning employees available at the Gang's headquarters. As stated by the Foreman involved:

. . . I have no way of contacting gang members when they leave the outfits for the weekend. I have no phone numbers and don't even know where most live.

The only information we require of our employees is their name, employee number, social security number and service date.

On the weekend in question, I was instructed to get all employees I could out of our outfits. I did that and called no one because I don't have any phone numbers.

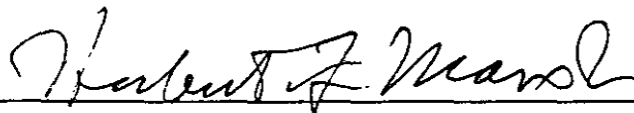
Previous Awards have found that a carrier, when faced

with an emergency, has greater flexibility in calling employees to work than in other situations. The Organization contends that the occurrence here under review did not consist of a true emergency. The Board recognizes the need for quick response to the accident in order to restore the line to service. However, it is clear that the Claimant, who was off duty and away from the site in proper fashion, should have been contacted either to replace an employee or simply to add to the work force. While the Foreman did not have telephone numbers, it appears that such were available from the Carrier's call desk. Even if it was impractical to call the Claimant for work on Saturday, he clearly could have been notified in timely fashion to join the Gang on Sunday. Even in the face of the claimed "emergency", this could have been accomplished, and the Claimant would have had the opportunity for overtime work being performed by junior employees.

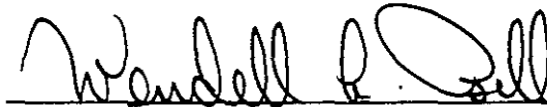
Under these circumstances, the claim will be sustained for the Sunday work. The Claimant will receive an equivalent number of hours' pay at the overtime rate equivalent to that worked by other Gang members on Sunday. Claim for Saturday overtime is denied.

A W A R D

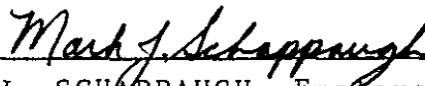
Claim sustained to the extent provided in the Findings.
The Carrier is directed to put this Award into effect within
thirty days of the date of this Award.



HERBERT L. MARX, JR., Chairman and Neutral Member



WENDELL A. BELL, Carrier Member



MARK J. SCHAPPAUGH, Employee Member

NEW YORK, NY

DATED: 8/17/90