

PUBLIC LAW BOARD NO. 6249

PARTIES	)	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO	)	
DISPUTE	)	UNION PACIFIC RAILROAD COMPANY (FORMER ST. LOUIS SOUTHWESTERN RAILWAY COMPANY)

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned Dalhart District employees J. Martinez, S. Rojas, J. Moore, S. Beeson, R. Rivas, J. A. DiazDeLeon and S. E. Gomez to perform work at a derailment between Mile Posts 307.90 and 308.10 on the Pratt District rather than calling and assigning Pratt District employees J. D. Thompson, L. H. Freeman, G. R. Brown, J. Rivas, E. Iverson and J. J. Morales on August 2, 3 and 4, 1996 (System File MW-97-1-CB/BMW 97-46).

2. As a consequence of the violations referred to in Part (1) above, the Claimants shall each be allowed pay at their respective time and one-half and double time rates of pay for an equal proportionate share of the total number of man-hours expended by the Dalhart District forces during the period cited above.

OPINION OF BOARD

Because of a main line derailment at 10:10 p.m. on August 2, 1996 at M.P. 307.9 near Cullison, Kansas within the boundaries of the Pratt District, the Carrier determined that all available maintenance of way forces needed to be called out. According to the Carrier, "... [w]e suffered a main line derailment ... [of] seven articulated cars due to high winds and thunderstorms." Further, according to the Carrier, beginning early Saturday morning August 3, 1996, Track Inspector G. D. Brown began to make the necessary calls. According to the Organization, Brown began to make the calls at 8:00 p.m. on August 2, 1996. The Carrier asserts that Brown exhausted the list of employees from the Pratt District and employees on traveling gangs who live in the Pratt area. The Carrier states that Brown then began to call employees from the ad-

joining Dalhart District. Dalhart District employees were brought in to work on the derailment.

The Organization asserts that Claimants were assigned to the Pratt District and were not called in violation of their Pratt District seniority rights. The Carrier contends that district seniority assertions are irrelevant because Claimants were assigned to traveling per diem gangs covering an area encompassing both the Pratt and Dalhart Districts.

Given the nature of the derailment, we find as the Carrier argues that the main line derailment on August 2, 1996 was an emergency thereby allowing the Carrier great latitude to bring in all available forces.¹ But, as the Organization argues, even if an emergency existed, the Carrier was still obligated to make a reasonable attempt to honor seniority entitlements in making its

work assignments to deal with the emergency.²

With respect to whether Claimants were called, this record is full of conflicts.

The Carrier asserts that it met any obligation it may have had to contact Claimants. According to the statement of Engineer B. L. Reinhardt, "[t]elephone calls were placed and made by Track Inspector G. D. Brown to all Pratt District employees in an attempt to summon the necessary forces needed for this work." Offering statements from several employees, the Organization disputes that Claimants were called as the Carrier asserts. We have no statement from Brown as to what he may have done with respect to making the calls.

In its Submission at 18, the Organization asserts that "[a]bsent any statement from Track Inspector Brown, there is no proof that a reasonable attempt was made to contact the Claimants for the overtime service." See also, the

¹ See e.g., *Third Division Award 26677* ("This Board has held that in an emergency Carrier may take whatever action it deems appropriate to cope with its problems; see *Third Division Awards 13316, 12777, 15597* and many similar holdings."). See also, *Award 21* of this Board ("It has long been held that "emergency" conditions — i.e., "... an unforeseen combination of circumstances that calls for immediate action" — excuse a carrier from its contractual obligations.").

² See e.g., *Third Division Award 21222* ("Even with the broad latitude permitted Carrier in an emergency situation, the obligation still persists to make a reasonable effort to call all employees provided by rule for the work, (see *Awards 18425, 20109, 21090* and many others), prior to resorting to other expedients.").

Organization's March 11, 1997 letter ("... the Carrier has not shown nothing from Mr. Brown stating that he had exhausted his list of phone numbers"). Ordinarily, that type of hearsay assertion would not be enough for the Carrier to defend against the Organization's contentions that calls were not made.³

According to the Carrier, however, Track Inspector Brown was the Organization's local chairman. If Brown was the local chairman at the time, the Organization therefore would have had easy access to Brown to find out what happened — specifically, whether Brown made the calls to the Pratt District employees as Engineer Reinhardt contends. If Brown did not make the calls as Reinhardt contends, then we would expect a statement provided by the Organization from

Local Chairman Brown to that effect. Again, there is none.

However, we note that the Organization disputes the Carrier's assertion that Track Inspector Brown was the Organization's local chairman. In its March 11, 1997 letter, the Organization asserts:

I also take exception to Mr. Reinhardt's letter dated November 8, 1996 account he has stated that Mr. Brown made the phone calls and Mr. Brown is not the district Chairman but Mr. Shoemaker is the district Chairman

With that dispute over Brown's status, the question of who had the obligation to provide something from Brown concerning his activities then becomes a factually disputed question.

But in the end, the factual conflicts over whether Track Inspector Brown called Claimants and which party had the ultimate burden to demonstrate whether Brown did or did not call Claimants are irrelevant. There is another more fundamental conflict which defeats the Organization's claim.

Relying upon Articles 2 and 6, the Organization asserts that because Claimants had Pratt District seniority and the derailment occurred within the Pratt District,

³ See *Third Division Award 29763* concerning the Carrier's obligation to rebut similar assertions:

... When a claim is raised alleging that the most senior employee was not called, it is Carrier's responsibility to provide some evidence that a reasonable effort was made. In this instance, the record contains only a "hearsay" statement that the Roadmaster telephoned. There is no written statement from the Roadmaster himself indicating the number he called, when the alleged phone call to Claimant's wife took place, what information he supposed gave her, and the like.

Claimants had priority to the work over the Dalhart District employees.⁴ But, that also is in dispute. As stated in Engineer Reinhardt's November 8, 1996 letter, it appears that at the time of the derailment the involved employees "... were not assigned to the Pratt or the Dalhart Districts, they were assigned to traveling per diem gangs working in other districts." While the Organization disputes the effect of that assertion and argues that Claimants' Pratt Seniority District rights gave them preference to the work, from the record the Organization's asserted entitlements for Claimants are also in dispute. If the affected employees (*i.e.* those on the Pratt and Dalhart seniority rosters) were working on gangs covering several districts, then the Organization has not sufficiently shown that Claimants' seniority rights were superior to the seniority rights of employees from the Dalhart District who did the work. But, that is the Organization's burden.

⁴ Article 2 provides, in pertinent part, that "Rights accruing to employees under the seniority entitle them to consideration for positions in accordance with their relative length of service as hereinafter provided." Article 6 provides, in pertinent part, that "Seniority rosters of employees of each sub-department by seniority districts will be separately compiled."

This disputed record does not ultimately establish the crucial fact necessary for the Organization to prevail — *i.e.*, evidence of a superior entitlement to perform the work. For that reason, this claim must be denied.

AWARD

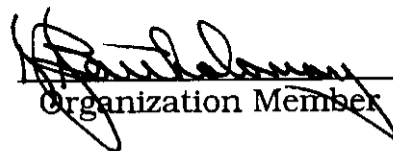
Claim denied.



Edwin H. Benn
Neutral Member



Carrier Member



Organization Member

Dated: 7-24-02