

**PUBLIC LAW BOARD NO. 6399**

**CASE NO. 18  
AWARD NO. 18**

**Brotherhood of Maintenance of Way Employes  
Division - IBT Rail Conference**

**and**

**Norfolk Southern Railway Company  
(former Norfolk & Western Railway Company)**

**Claimants: D. Smith, M. Barnett, and W. Cottrill**

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STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it called and assigned employes T. Bell, J. Schaffer and E. Patrick to perform overtime work consisting of chipping concrete at Mile Post S 62.9, on the Lake Division on March 7, 2020, instead of calling and assigning Messrs. D. Smith, M. Barnett and W. Cottrill thereto (Carrier’s File MW-FTW-20-40-BB-256 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimants D. Smith, M. Barnett and W. Cottrill shall now each be compensated for six (6) hours of overtime as worked by the wrongfully assigned employes.”

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the Carrier and Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that the Public Law Board 6399 has jurisdiction over the dispute involved herein and that the parties were given due notice of hearing thereon.

The Claimants have established and maintain seniority in the Carrier’s Maintenance of Way and Structures Department. The Claimants hold seniority on the region where the claimed work occurred.

On Saturday, March 7, 2020, the Carrier was notified that concrete debris was falling from a bridge located at MP S 69.2, endangering motorists on the roadway below. City officials closed the road to traffic. In response, the Carrier contacted qualified employees from the Eastern Region – Ohio Division (J. Schaffer and E. Patrick) and the Eastern Region – Scioto Division (T. Bell) to perform emergency repairs. The Claimants were not called to perform the work.

The Organization filed this claim on March 18, 2020, which was appealed to the highest officer on-property. The Carrier denied the claim on May 15, 2020. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

The Organization contends that there is no dispute that the overtime work occurred on the Claimants' assigned seniority district and that the Claimants have customarily and historically performed this work as part of their regular assignment on the seniority district. In addition, the Organization contends that employees T. Bell, J. Schaffer, and E. Patrick are not assigned to the territory where this overtime work occurred and that they do not hold seniority on the seniority district.

The Organization contends that Rule 2 of the controlling Agreement establishes that seniority rights are circumscribed by seniority district, as described herein:

**RULE 2 - SENIORITY GROUPS, CLASSES AND GRADES**

(a) For the purpose of applying seniority, the employees covered by this Agreement shall be divided into seniority Groups, Classes and Grades as follows:

\* \* \*

(b) Employees having an employment relationship with the Carrier shall establish and accumulate seniority in the track Sub-Department (Group 1) in one of the following seniority districts...

The Organization contends that the assignment of the off-territory employees violated the Claimants' seniority rights under the Agreement.

The Organization contends that there is no dispute that the Claimants were available and willing to perform the work and that the Claimants would have performed the work had the Carrier called and offered them the opportunity to do so. There is also no dispute that the Carrier made no attempt to assign the Claimants to perform this work. The Organization contends that arbitral boards have historically upheld the principle that overtime assignments must be assigned on the basis of seniority, *citing*, Third Division Award 19758.

The Organization contends that the Carrier has failed to prove that an emergency excused its assignment without regard to seniority. The Organization cites Third Division Award 24440 in which the Board defined an emergency as "the sudden, unforeseeable, and uncontrollable nature of the event that interrupts operations and brings them to an immediate halt." The Organization contends that the Carrier has made no assertion that its operations were hindered or slowed in any capacity, let alone brought to an immediate halt. Furthermore, the Carrier has offered no evidence to establish this affirmative defense or that assignment of the off-territory employees to perform the work would have allowed a timelier response to the bridge repair.

The Carrier contends that its decision to assign the claimed bridge repair work to employees T. Bell, J. Schaffer, and E. Patrick was appropriate and consistent with the applicable working agreement.

The Carrier contends that the falling concrete debris from the bridge constituted a genuine emergency, posing a significant threat to public safety and requiring immediate action. In such circumstances, the Carrier maintains that it is afforded broad managerial discretion to respond swiftly and effectively.

The Carrier contends that emergency situations are broadly defined as “an unforeseen combination of circumstances which calls for immediate action,” and that in this case, local authorities had closed a roadway in Bucyrus, Ohio due to falling concrete from a Carrier-maintained bridge.

The Carrier contends that the called employees were the most readily available and strategically positioned to perform the necessary repairs without delay, thereby ensuring the safety of the public and the integrity of the infrastructure. The Carrier contends that this rapid response was essential and fully aligned with its responsibility to protect public safety and maintain operational integrity.

The Carrier contends that it is afforded substantial discretion in deploying its workforce to address urgent safety concerns. The Carrier contends that given the nature and immediacy of the emergency, it was not obligated to assign the work to the Claimants, and their seniority did not entitle them to the assignment under these conditions.

The Carrier contends that while the Organization’s claim asserted that Bell, Schaffer, and Patrick do not hold seniority on the district where the work occurred, that assertion is incorrect. The Carrier contends that Bell does, in fact, hold seniority on the district.

The Carrier also contends that Rule 18, cited by the Organization, permits the Carrier to assign employees to work on a territory where they do not hold seniority for up to 30 days.

The Third Division has defined an emergency as “an unforeseen combination of circumstances that calls for immediate action.” Third Division Award 20527; Third Division Award 10965. The Board has carefully reviewed the record and has found that the Carrier has failed to demonstrate that an emergency interrupted train operations which called for immediate action by the Carrier. Although the roadway below the Carrier-maintained bridge was closed due to falling debris, the record contains no evidence purporting to show an interruption in the Carrier’s operations.

Although the Carrier also asserted that Rule 18 permitted it to assign off-territory employees to perform the work for up to 30 days, the appellate nature of our review precludes us from considering arguments not raised during the parties’ on-property discussions.

Finally, the Carrier’s assertion that T. Bell was assigned to the seniority district where the work took place is un rebutted by the Organization and is accepted as proven. The Board finds that the Claimants shall be compensated for equal shares of six hours of overtime worked by J. Schaffer and E. Patrick, but not for hours worked by T. Bell.

AWARD

Claim sustained.

ORDER

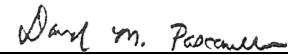
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is signed by the parties.



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Scott M. Goodspeed,  
Carrier Member



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Kathryn A. VanDagens,  
Chairman



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David M. Pascarella,  
Employe Member

Dated: 2-23-2026