

**SPECIAL BOARD OF ADJUSTMENT NO. 1048**

**AWARD NO. 114**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim on behalf of G. L. Marston for five (5) hours at the overtime rate in that section foremen were called to patrol their respective section territories on August 31, 2000, account of flash flood warnings.

(Carrier File MW-ROAN-00-60-LM-427)

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

**AWARD**

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

On the date in question, Carrier was advised of flash flood warnings over two areas of its track, one area in the Petersburg section gang territory and one in the Suffolk section gang territory. Carrier employed the section foreman and assistant section foreman of the Petersburg gang to perform a flash flood inspection of the track within their territory. Carrier also assigned the section foreman and a trackman from the Suffolk gang to perform a flash flood inspection within their territory. The two inspections were performed simultaneously. The Organization contends that, because the inspections covered two different section territories, Claimant, the track patrol foreman, should have been called to do the work.

At issue is interpretation of Agreement Rule 42(d) which provides:

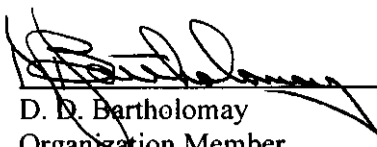
Except as provided for in Section (e) of this Rule 42, when employees are notified or called to perform work not continuous with the regular work period, the employee or employees working in the immediate force or gang designated to perform the work, will be notified or called on a seniority basis. The provisions of this Section (d) shall not apply in cases of emergency.

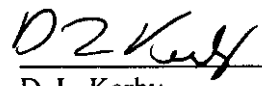
Because of the nature of the flash flood warning, Carrier determined to patrol the two territories simultaneously. Consequently, there were two jobs for which employees had to be notified to perform

work that were not contiguous with the regular work period. One job was in the Petersburg gang's territory. Carrier acted properly in calling the Petersburg section gang section foreman because the Petersburg section gang was the immediate gang designated to perform that work. The other job was in the Suffolk gang's territory. Carrier acted properly in calling the Suffolk gang section foreman because the Suffolk section gang was the immediate gang designated to perform the work. Had Carrier determined that the entire area vulnerable to flash flood was to be inspected as a single job, it would have been obligated to call Claimant. There is nothing in the record that would indicate that Carrier divided a single job into two jobs as a subterfuge to deprive Claimant of the work. On the contrary, the method Carrier chose to perform the work required four employees to work overtime instead of two. We see no basis for upsetting Carrier's designation of the gangs to perform the work.

Accordingly, the claim is denied.

  
M. H. Malin  
Chairman and Neutral Member

  
D. D. Bartholomay  
Organization Member

  
D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on September 24, 2002