

Award No. 7
S.B.A. Case No. 7
(Third Division Docket No. 9046)

SPECIAL BOARD OF ADJUSTMENT NO. 313

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
and
UNION PACIFIC RAILROAD COMPANY

STATEMENT
OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- "(1) The Carrier violated the Agreement when it called and used employees junior in seniority to B&B Carpenter J. R. Redmond to perform overtime service from 11:00 p.m. on July 16, 1955, to 7:00 p.m. on July 17, 1955.
- "(2) B&B Carpenter J. R. Redmond be reimbursed for the exact amount of monetary loss suffered account of the violation referred to in part one (1) of this claim."

FINDINGS: Special Board of Adjustment No. 313, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

The Carrier and employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Board has jurisdiction over the dispute involved herein.

The organization claims that the carrier violated the agreement in failing to call out the claimant, a senior employee, for extra work.

It takes the usual position that the right of the senior available employee to the work is implied in the general practice on the property and the spirit of the agreement.

The Carrier has made its presentation on the issue of whether the carrier is required at its peril to use employees in accordance with strict seniority on a call-out involving an emergency.

Besides the question of whether an actual emergency existed, is the question of whether claimant was available for the call-out and whether the carrier should be held accountable for knowing of his actual availability after he had advised his foreman that he was leaving to accept an assignment in East Spokane.

In our opinion there was a sufficient emergency to justify the action taken by the carrier. By the claimant's own report to his foreman he in a manner severed himself from the gang. The foreman could not be expected to know that he was still around and available for another assignment.

Under the circumstances we find no violation of the agreement.

AWARD:

The claim is denied.

SPECIAL BOARD OF ADJUSTMENT NO. 313

(s) Marion Beatty
Marion Beatty, Chairman

(s) A. J. Cunningham
A. J. Cunningham, Organization Member

(s) A. D. Hanson
A. D. Hanson, Carrier Member

Omaha, Nebraska
June 10, 1960