

SPECIAL BOARD OF ADJUSTMENT NO. 488

PARTIES: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 33

STATEMENT
OF CLAIM:

"Claim of the System Committee that:

1. The Carrier violated the effective Agreement by failing to call Section Foreman Arthur L. Maxwell, Holloway, Ohio to patrol track on his section during overtime hours on September 2, 1961.

2. Section Foreman Arthur L. Maxwell be now compensated for 4 hours pay at his respective pro rata rate account of this violation of the agreement."

FINDINGS:

It is the position of the Carrier that on the date in question a resident of Lafferty, Ohio phoned the Carrier and said that rains had washed out a portion of the track adjacent to the bridge at Lafferty.

At the time this call was received a train had departed to operate over the CI&W.

Carrier states that "based on the seriousness of the situation and in order to prevent a possible derailment," it contacted Extra Foreman Burgy instead of Section Foreman Maxwell, on whose assigned territory the washout occurred.

Carrier states it called Burgy because it knew Burgy lived in the immediate vicinity.

Carrier says its action "was not any intention to deliberately violate the agreement, but was an attempt on the part of our people to avoid what could have resulted in a serious consequence. Had we not taken the action and a derailment occurred, we certainly would have been severely criticized in view of the facts which were in our possession."

The facts disclose the Carrier's statement is correct. The washout occurred at Lafferty, and Extra Gang Foreman J. S. Burgy, who was called, lived 3.69 miles from Lafferty while Claimant Section Foreman Maxwell lived on an RFD route off Route No. 40, near Bellaire, Ohio, 16 miles from the site of the washout at Lafferty.

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The information as to the washout was telephoned to the Chief Dispatcher's office at Wheeling, at the very moment a train was leaving Benwood, headed for the direction of the washout 25 miles away.

There is no question that Section Foreman Maxwell has the prime seniority right to be called for work on his own assigned territory. Neither is there any proof that the Carrier's action was a deliberate attempt to violate the Agreement.

Therefore, we must and will hold that the Carrier's action was violative of the Agreement, but in the light of the emergency situation then existing, we will deny any claim for monetary payment.

AWARD

Claim disposed of in accordance with Findings.

(s) Edward A. Lynch
Edward A. Lynch, Chairman

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

(s) T. S. Woods
T. S. Woods, Carrier Member

Dated at Baltimore, Md.,
this 28th day of August, 1963.