

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number** 21222
Docket Number MW-21102

Irwin M. Lieberman, Referee

(Brotherhood of **Maintenance** of Way **Employees**)

PAKCES TO DISPUTE: (

(Norfolk and Western Railway Company (Lake Region))

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

(1) **The** Agreement was violated **when**, on July 15, 1973, it assigned or otherwise permitted Arc Welder Fred Smith, **Ass't.** Roadmaster Abbey **Rayle** and **Trainmaster DeCamp** to repair a **broken** rail instead of calling and using Section Laborers L. Holland and E. O. Johnson for such service (System File **MW-FST-73-11**).

(2) Section Laborers L. Holland and E. O. Johnson each be allowed eight (8) hours of pay at their **time** and one-half rates account of the violation described above.

OPINION OF BOARD: On Sunday July **15**, 1973 Carrier used an Assistant goad-master, a **Maintenance** of Way Welder, with some help **from** a **Trainmaster** to repair a **broken rail** near Maple Grove, Ohio. Claimants are regularly assigned **Sectionmen** headquartered at Maple Grove, **who** were on their rest day **on** the Sunday in question.

Carrier alleges that there was an **emergency** on the day in question, caused by the **broken** rail, which resulted in the delay of train service. Carrier asserts that it made an honest effort to secure the services of **employees** from the Section headquarters at Maple **Grove** but was unsuccessful; only at **that point** did Carrier resort to using supervisory personnel to correct the emergency **problem**.

Petitioner asserts that **Carrier did** not call Claimants on the day in question and that there is no evidence that they indeed were called by telephone that day. Hence, **it** is concluded that Carrier has not fulfilled its obligation of making a reasonable effort **to** reach the two Claimants.

The record of this dispute discloses that during the handling on the property no **proof** was submitted to support Carrier's contention that either Claimant was called. The sole evidence was a letter **from** the Roadmaster which stated: ". . .**every** effort was made to call **sec #21** people out to change the rail. **None** responded to the call." It has been held repeatedly that Carrier has the obligation to **make** a reasonable effort to **communicate** with **employees** in situations **analogous** to that herein; Carrier acknowledged that responsibility in this dispute. **In** many such cases in the past (primarily in non-emergency situations) we have even held that one call **was** not sufficient to discharge Carrier's obligation, (e.g. Awards 20119, 19658, 20466 and 20534). Third party stat-ts that "claimants **were** not **readily** available" are not supported by the record on the property. **Even** with the **broad** latitude permitted Carrier **in**

an emergency situation, the obligation still persists to make a reasonable effort to call the **employees** provided by rule for the work, (see Awards 18425, 20109, 21090 and many others), prior to resorting to other **expedients**. Evidence of such effort is lacking in this dispute. With **respect** to the **monetary** aspect of the **Claim**, Carrier did **not** raise **any** question during the **handling** on the property and therefore the Claim will be sustained as presented.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier **and** Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved **herein**; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL **RAILROAD** ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of **August 1976.**