Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11363
SECOND DIVISION Docket No. 11148-T
2-BN-CM-'87

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Burlington Northern Railroad Company

Dispute: Claim of Employes:

1. That the Burlington Northern Railroad Company violated the provisions of the current controlling Agreement, Rule No. 118, and a portion of the Local Understanding at Memphis, Tennessee.

2. That Carman H. D. Vaughn be compensated for two and seven tenths (2.7) hours at the time and one-half rate, the equivalent of a four (4) hour call, provided also in the Agreement, at the then Carman's rate of pay of $13.20 per hour, or $52.80.

Carman H. D. Vaughn was qualified and available for the work described herein.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

As third party in interest, the United Transportation Union was advised of the pendency of this case, but chose not to file a Submission with the Division.

This is a Claim based on the alleged failure of Carrier to call Claimant to perform wrecking crew work at Memphis, Tennessee. Carrier alleges that an attempt was made, but there was no answer. Claimant insists that he was at home at the time the call was supposed to have been made, and that, even if he was not available to answer the call, his answering machine would have recorded the message.

The record contains a statement from a Carrier Officer stating that he had called the entire wrecker board, including the Claimant, but that there was no answer at the telephone number given by the Claimant. The Organization asserts, however, that the Foreman either inadvertently overlooked Claimant's name while going down the list, or deliberately failed to call the Claimant because he had refused overtime work on the rip track when called earlier that morning. Moreover, the Organization submits that even if the Foreman did place the call and receive no answer, he should have verified that the call was not answered.

Obviously, this case turns on a credibility conflict. Who should be believed - the Foreman who maintains that he made the call, or the Claimant who insists that no call was received? This Board has no way of resolving this evidentiary conflict. We have no alternative but to find, as have other Boards when presented with precisely the same situation, the Claimant has failed to meet his burden of proving a contract violation. Third Division Awards 21423, 18871.

We also reject as unpersuasive the Organization's contention that it was the responsibility of the Carrier Foreman to verify the "no answer" at Claimant's home. The Board has held that if the Carrier telephones the Claimant at his telephone number of record, it complies with the rule requiring employes to be called in order of seniority. In Second Division Award 4855, the Board stated:

> "The Rule involved imposes upon the Carrier a duty to make a reasonable effort to communicate with the employe by a method known and acceptable to the parties. We find that Carrier's effort to reach Claimant by telephone was reasonable and in accordance with the Agreement. The claim, therefore, is denied.
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> See Third Division Awards 10376 (McDermott); Award 11743 (Engelstein); Award 11994 (Seff)."

In Third Division Award 14739, BRS v. CRIP, the Board stated:

> "The Organization argues that when the attempt to contact Claimant failed, Carrier should have used other means to have called the Claimant. This argument was refuted in Award 11743 when the Referee stated:
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> '...To place this burden upon Carrier would mean that it would have to continue to pursue other means until it was successful in reaching employe

or it would have to be regarded as having violated the agreement. The rule does not undertake to make that statement...'

It is the opinion of this Board that Carrier did make an effort to call Claimant on the date in question and that the Carrier was under no obligation to use any other means to contact the Claimant.

The question remains was this effort on the part of the Carrier in making the phone call to Claimant sufficient so as to meet the requirement of the rule. We feel that the attempt on the part of the Carrier to contact the claimant was sufficient to meet the requirements of the rule and therefore we must conclude that the Agreement was not violated and this claim must be denied."

Based on the foregoing, we will rule to deny the instant Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 21st day of October 1987.