

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

1. That the service rights of Carman Gary P. Cox and the provisions of Rule 27 1/2 of the Shop Crafts Agreement were violated account Cox was not permitted to participate in relief work at the Raceland Car Shops on February 5, 1987 in accordance with the provisions of Rule 27 1/2 of the controlling Agreement.

2. Accordingly, Cox is entitled to be compensated eight (8) hours pay at the applicable Carmen's rate of pay for the date of February 5, 1987.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

The Claim was filed because a Carman junior to Claimant was used to fill a vacancy on February 5, 1987.

Claim alleges that Rule 27 1/2 of the Agreement was violated. This Rule provides for furloughed employees to be called in seniority order for extra or relief work, provided a written notice is filed with the Carrier indicating one's desire to be so used. In accordance with the Rule both Claimant and the junior Carman were entitled to be called for extra or relief work.

The Organization alleges that Claimant and his wife were home all day on February 5, 1987, and the Carrier did not call him to fill a first shift overtime vacancy.

The Carrier responds that "records reveal" that the Claimant was called at 7:30 A.M. on February 5, 1989, but no answer was received. Therefore, at 7:35 A.M. the junior Carman was contacted and accepted the call.

The Organization has not met its burden of proof in this case as it must as moving party. Second Division Award 6878 held: "To prevail on the merits a claim must be supported by proof as distinguished from mere assertions and conjecture." (Also see Second Division Awards 3246, 5057, 6656.) The Board finds insufficient evidence of record to support the conclusion that the Claimant as senior Carman, was available or at home when called on the date in question. Records show that a call was made and the Claimant did not answer the phone. The Carrier, therefore, properly went to the next Carman on the call list.

Third Division Award 28752 cited by the Organization to support this Claim is not on point. In that case, in contrast to the instant one, the Carrier merely alleged, without offer of probative evidence, that an attempt was made to contact an employee for a vacancy.

On the record as a whole the Claim must be denied.

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 16th day of October 1991.