Award No. 4855
Docket No. 4778
2-C&O-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Levi M. Hall when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (Southern Region)

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated, particularly Rule 11 on November 2, 1963, when carman helper, Joseph A. Brown was not called for overtime work in compliance with Rule 11, Par. C, 3 and 4, of the controlling agreement.

2. That accordingly, the Carrier be ordered to compensate carman helper Joseph A. Brown in the amount of eight (8) hours for November 2, 1963, at the freight car helper's applicable time and one-half rate of pay for the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: Carman Helper Joseph A. Brown, hereinafter referred to as the claimant is regularly employed as such by the Chesapeake and Ohio Railway Co., hereinafter referred to as the carrier, at its Russell Terminal, Russell, Ky., with regular assignment on the first shift Monday through Friday, rest days Saturday and Sunday.

At the completion of his work day, Friday, November 1, 1963, claimant checked the overtime board to determine his standing thereon, and found that he stood first out for overtime work. Due to the circumstances prevailing at Russell Terminal, claimant knew that one man and possibly two would be called and worked overtime on the first shift, Saturday, November 2, 1963, therefore, he arose early on the morning of November 2 and prepared for work. Failing to receive a call by 6:00 A.M., claimant checked his telephone to see if it was in order and found it to be in good order. Again at 6:30 A.M. when he had received no call, he again checked and found his telephone in good order. At 7:15 A.M., claimant had not received a call, and knowing that Carman Helper W. M. Hern was second out on the overtime board, claimant called Mr. Hern's home and was advised that Mr. Hern had been called to work.

"We do not accept Claimant's interpretation that Rule 18(a) carries with an obligation and burden on the part of Carrier to reach the employe if the established arrangement proves inadequate. . . . To place this burden upon the 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. Furthermore, for us to draw that interpretation would be to place an unrealistic burden on one of the parties."

Here again the Board said that carrier has fulfilled its obligation when it has made a reasonable attempt to reach an employe through usual and customary means. This is what the foreman did in the instant case. Failing to get an answer after calling the employe twice, carrier's obligation to claimant was obviously fulfilled.

Third Division Award 11994 (Seff) involved dispute as to whether carrier had attempted to call the claimant. In this denial opinion, it was said:

"The Carrier states that efforts were made to call the Claimant but he did not answer his phone. The Organization states flatly that no call was made. There is an irreconcilable dispute as to the facts. Apart from contrary bald assertions the record is devoid of evidence in support of either assertion. Under these circumstances it is impossible to resolve this dispute. Absent proof it must be held that the Carrier did not violate the Agreement."

A parallel situation obtains in this dispute insofar as the employes' case is concerned. They have tried to show that Foreman Wike did not attempt to call Claimant Brown; however, they have only the uncorroborated statement of Brown that his phone did not ring. Contrasted to this carrier has the testimony of Foreman Wike, supported by two witnesses, plus the call-sheet which shows that Brown was called at 6:13 A. M. on the date in question and that he did not answer.

The rules cited by the employes offer no comfort to their position. The provisions merely establish an equalizing overtime board, but nothing is said as to the manner in which employes will be called. Furthermore, even if carrier had not made proper effort to call Brown, which is not admitted, he would not be entitled to the payment claimed since, under an equalizing overtime board, he would be put first out so as to make up the time he had lost.

The claim fails in all respects. The employes have offered no actual evidence to support their position other than the uncorroborated statement of the claimant. The carrier has presented concrete evidence to show that a reasonable effort was made to call Brown and that his failure to receive the call resulted from something beyond the ability of the carrier to control.

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 employe 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 were given due notice of hearing thereon.

Claimant Brown on November 2, 1963, was regularly employed at Russell Terminal, Russell, Kentucky. He contends that on November 1, 1963, he checked the board and found that he stood first out for the overtime work; that he knew that one and possibly two employes would be called for overtime on the first shift, November 2; that failing to receive a call by 6:00 A. M., Claimant checked his telephone to see if it was in good order; that at 7:15 A. M., knowing that Carman Helper Hern was second out on the Overtime Board, Claimant called Hern's home and was advised Hern had been called to work.

Rule 11 (c) of the effective agreement provides: "Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally."

Carrier does not deny that Claimant stood first out on the overtime board on the date in question. Carrier maintains, however, the Claimant's immediate Foreman, Wike, attempted to call Claimant on two occasions on the morning of November 2 and got **no answer** before he called Carman Helper Hern.

The issue in this case, then, is whether or not a reasonable effort was made to call Claimant Brown for the work for which he stood.

Claimant's statement that he received no telephone call has not been corroborated. In support of Carrier's contention the following evidence was offered — (a) a copy of a call sheet containing an entry that Claimant Brown was called at 6:13 A. M. and a "no answer" was recorded, (b) the statement of two witnesses who claimed to be present when Foreman Wike was telephoning Claimant. In view of Claimant's admitted knowledge the previous day that on November 2 there would be overtime work, it is difficult to understand why Claimant did not call the Foreman directly to determine authoritatively if he stood for work, if he hadn't received a call.

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.

See Third Division Awards 10376 (McDermott); Award 11743 (Engelstein); Award 11994 (Seff).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1966.

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