



Award No. 5709

Docket No. 5544

2-Pull-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'

**DEPARTMENT, A. F. OF L. - C. I. O.
(CARMEN)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Pullman Company violated the controlling agreement particularly Rules 7 and 22, thereof when they assigned two carmen from another seniority point to perform carmen's work for approximately three hours on October 28, and two carmen from another seniority point to perform carmen's work for approximately eight (8) hours on October 29, 1966, thereby depriving Carman A. B. Harris his right to work in his own seniority point.
2. That accordingly, the Pullman Company be required to compensate Carman A. B. Harris for two hours and 40 minutes at the punitive rate for October 28, 1966, and eight hours at the punitive rate for October 29, 1966, account of said violation.

EMPLOYEES' STATEMENT OF FACTS: Carman Allan B. Harris, hereinafter referred to as the Claimant, is regularly employed as such by the Pullman Company, hereinafter referred to as the Carrier, at its Chicago Agency, the Illinois Central yard, with regular assignment on the first shift, Sunday through Thursday with rest days of Friday and Saturday.

On Friday, October 28, 1966, Pullman Car "Imperial Fields" was put on steam, in the Illinois Central yard, after which it was discovered that it had several defects which would prevent its departure as scheduled on Saturday, October 29, 1966. Therefore, overtime was authorized by the Carrier to assure that Pullman Car "Imperial Fields" would leave the yard as scheduled on October 29, 1966.

Claimant was employed in the Illinois Central yard, and was entitled to and available for call.

Claimant although residing outside the city of Chicago, had made previous arrangements with the Carrier, that he could be reached through his sister who resided in the City of Chicago. Said arrangements were acceptable to the Carrier.

It is noted that Claimant McVey lived only 2 miles away, whereas Carman Harris in the instant case lived at least 20 miles away. Futher, Claimant McVey in Award 4815 had no telephone, and in this case Claimant Harris had no telephone. It appears there is even a sounder basis for denial of the instant claim account the much greater distance involved as well as the absence of a telephone in the Claimant's home.

Award No. 16 of Special Board of Adjustment No. 527 involved a dispute between the Brotherhood of Locomotive Firemen and Enginemen and the St. Louis Southwestern Railway Company. In that dispute Engineer W. P. Nerren claimed lost earnings amounting to 223 miles at appropriate rate account not used on regular turn on October 29, 1962. In that case the Claimant had a telephone and attempts were made to notify the Claimant by telephone that he was being called, but without success. The claim of Engineer Nerren was denied by Special Board No. 527 with Attorney David R. Douglass serving as chairman. Thus, it is evident that the various Boards have denied even stronger claims than the one presented in behalf of Carman Harris.

CONCLUSION

In this submission the Company has shown that no violation of **Rule 7. Calls and Rule 22. Date and Application of Seniority** occurred in the matter complained of. Further, the Company has shown herein that Management made suitable effort to contact Carman Harris on October 28 and 29, 1966. Also, the Company has shown that Carman Harris does not have a telephone in his place of residence and that the method he has arranged for being reached for emergency work is inadequate and impractical. Finally, the Company has shown that the Awards of the Adjustment Board support Management in this dispute.

The claim is without merit and should be denied.

(Exhibits not reproduced.)

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 waived right of appearance at hearing thereon.

Claimant was regularly employed by Carrier at its Chicago Agency, the Illinois Central Yard, with regular assignment on first shift, Sunday through Thursday, with rest days of Friday and Saturday. The record discloses that Claimant resided at Gary, Indiana, and did not have a telephone. The record further discloses, however, that he had made previous arrangements with the Carrier that he could be reached through his sister who resided in the city of Chicago; that he had left his sister's phone number with Carrier in the event he was needed on overtime duty; and that his sister would drive to his residence of some 20 miles away in an attempt to contact him for overtime work. On Friday, October 28, 1966, Carrier authorized overtime work on a Pullman Car and makes

the assertion that an attempt was made to reach this Claimant by telephone through Claimant's sister on October 28 between 1:00 P.M. and 1:30 P.M., but received no answer, and that further efforts were made on Saturday morning on October 29, but still received no answer on that date. The Organization has introduced in its Exhibit "A" the statement of Claimant's sister dated December 11, 1966, advising the Carrier that on October 28, she and Claimant were at her address and that she was home all day on October 29, but failed to receive any phone calls from Carrier. Carrier contends that these telephone calls were made as above set out; that they failed to get an answer on the telephone and that they were forced to go outside the Seniority District to obtain employees available for this type of overtime work.

This Board is not in a position to resolve the question of whether the phone calls were made or not made for the reason that the evidence is in direct conflict and can not be reconciled by a careful inspection of the record. This Board is not in a position to declare that either the Organization or Carrier is guilty of misrepresentation. To choose to believe one side and disbelieve the other side in this dispute would possibly be putting a premium on misrepresentation. Therefore, this Board admittedly chooses to compromise this dispute and will sustain the claim in the amount of one hour and 20 minutes at the straight time rate for October 28, 1966, and 4 hours at the straight rate for October 29, 1966.

A W A R D

Claim sustained in the amount of one-half of the time claimed at the straight rate of pay.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1969.