Award No. 5999
Docket No. 5859
2-SCL-(CM)-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current applicable agreement Carman A. M. Tyner, wrecker fireman, employed at the West Jacksonville Shop, Jacksonville, Florida, is entitled to compensation for eleven and one-half (11½) hours at time and one-half rate of pay beginning April 21, 1968 at 7:30 P. M. for service he would have performed had he been called properly.

2. That accordingly, the Carrier be ordered to compensate Carman Tyner for eleven and one-half (11½) hours at the time and one-half rate of pay for said violation on April 21, 1968.

EMPLOYES' STATEMENT OF FACTS: Carman A. M. Tyner, hereinafter referred to as the claimant, is the regularly assigned fireman on the West Jacksonville derrick. Mr. Tyner was at his home at Jacksonville, Florida on April 21, 1968 at 7:30 P. M., in the company of his wife, his sister and her daughter-in-law. Mr. and Mrs. Tyner, Mrs. Mary Williams and Mrs. Genie Williams were all present in the living room from 6:00 P. M. until 8:45 P. M. within ten (10) feet of the telephone. It did not ring. Mr. Tyner had experienced no trouble with his telephone prior to this time, nor did he experience any after this occurrence.

This dispute has been properly handled with all carrier officers authorized to handle disputes of this type with the result that all of them had declined to adjust it. The agreement effective March 10, 1923 as subsequently amended and the agreement effective January 1, 1968 between System Federation No. 42 and the Seaboard Coast Line Railroad Company are controlling.

POSITION OF EMPLOYES: Carmen's Special Rule 103 of the current working agreement was clearly violated when Carman A. M. Tyner was not called to fill his bid-in position on the wrecker on the date in question. It is the Carrier's obligation under the rule to contact and call all employes to

"When wrecking crews are called for wrecks or derailments outside of yard limits, a sufficient number of the regularly assigned crew will accompany the outfit."

This rule imposes upon carrier only a duty to make a reasonable effort to communicate with the employe by a method known and acceptable to the parties, and on this property the telephone is commonly used for the purpose of calling employes. Carrier's effort to notify Mr. Tyner in this instance, therefore, was both reasonable and in accordance with the agreement, and was further in accordance with your Board's ruling in Award 4855, as follows:

"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)."

In ruling on a dispute that included a situation similar to the issues here involved, the Third Division in its Award No. 10771 held, in part, as follows:

"The Carrier states that it called Wroblewski twice to fill the position. Being unable to contact him, the Carrier requested Perry to do the work. The Employes state, however, that Wroblewski received no such call, although he was at home during all times in question.

Wroblewski's claim for compensation, either at the straight or overtime rate, depends on whether or not he was called to do the work. It is undisputed that he had priority over Perry to fill the vacant position. To decide that Wroblewski was not called requires a finding that the Carrier did not tell the truth, or that it made an insufficient effort to call him. We do not make either of these findings.

There is no showing of motivation or other evidence to suggest that the Carrier deliberately intended to bypass Wroblewski. There can be no presumption that either party deliberately misstates the truth. Therefore, Carrier's assertions that the calls were made are accepted as true. In addition, we conclude that the effort made by the Carrier to call Wroblewski was sufficient. . . .' '

In conclusion, carrier reaffirms its position that there has been no violation of the agreement in this instance, and respectfully requests that your Board deny this claim in its entirety.

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 assigned from 7:00 A. M. to 3:30 P. M. on the date in question. At approximately 7:30 P. M. it was necessary to dispatch a wrecking crew. Claimant, according to Carrier, was called at his home five times from 7:40 P. M. to 8:40 P. M., and there was no answer. Claimant contends that he was in fact at home during this period entertaining visiting relatives, the phone was no more than 10 feet away, and it did not ring. There was no effort on the part of Carrier to determine whether or not the telephone was in working order, or that the "no answer" was verified with the telephone company.

Under the facts in this dispute, given the well known uncertainties and malfunctions of telecommunications equipment, Carrier in order to protect itself has a duty to determine whether the telephone equipment is in working order. Award No. 4815.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1970.

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