

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

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

Dispute: Claim of Employes:

1. That the Burlington Northern Railroad Company failed to properly call the Carman Wrecking Crew at Memphis, Tennessee on May 23, 1982, resulting in loss of time by Wrecking Crew Member B. C. Gaines from May 23, 1982 through May 26, 1982.

2. That the Burlington Northern Railroad Company reimburse Carman B. C. Gaines for the overtime lost as follows:

May 23, 1982 - 4 PM - 12 Midnight
8 hours - overtime rate
May 24, 1982 - 12 M - 4 PM
16 hours - overtime rate
May 25, 1982 (7 AM - 3 PM regular work shift
not claimed)
May 25, 1982 - 3 PM - 12 Mid
9 hours - overtime rate
May 26, 1982 - 12 Mid - 2 AM
2 hours - overtime rate

A total overtime hours lost during this period of thirty-five (35) hours at time and one-half or \$616.00.

3. That Carman B. C. Gaines be reimbursed for thirty-five hours at the time and one-half rate of pay at the time of occurrence which was \$11.73 per hour or \$616.00 plus ten percent (10%) interest.

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.

Claimant had, on April 5, 1982, bid for an Extra Board position on the Derrick Call List of a Wrecker Crew. On May 21, 1982, the Local Chairman observed that the wrecker list had not been changed to include Claimant. He immediately made a new list to include Claimant and placed a copy of it in the Rip Track Office, gave a copy to the General Car Foreman, and placed a copy in the office of the Trainyard. This was done on a Friday afternoon.

The necessity to call the Wrecker Crew came on the following Sunday afternoon. The Carrier utilized the old Wrecker Crew list and as a consequence Claimant was not called for service. Thus, he claims for the whole or portion of the four consecutive days that the Wrecker Crew worked.

The position of the Carrier is that the Foreman responsible for the call was not furnished a copy of the call list because the office in which the Local Chairman left the updated list was locked from Friday afternoon until Monday morning and was not available to the correct person to make the call. Furthermore, the responsibility for the correctness of the list rests with the Organization as a result of a local Agreement.

The Organization admits that the responsibility for the list rests with it, but states that the responsibility of the call rests with the Carrier management. The crux of Claimant's case is that leaving the list in the office was tantamount to notification because the Foremen who would make a call came into that office during the weekend.

The Carrier stated in correspondence between the parties that the office of the clerk in which the list was left is a separate office from the office of the General Car Foreman. The latter office is the one that the weekend Foremen utilize during the course of a weekend. The office of the clerk is left locked and is not utilized by the Foremen.

The duty Foreman called from the list that was available to him, the old list. Claimant has not established that the disposition of the new list by the Local Chairman was constructive notice to the Carrier. Constructive notice would include leaving the list in a place where the person responsible for the call should have observed it and consequently was under a duty to make calls according to the new list.

Both parties agree that it is the responsibility of the Organization to make out the list. This responsibility includes proper delivery of the list. Once delivered the Carrier has the duty to make calls accordingly. There is nothing in the record, except a self serving statement by the Organization, that would refute the statement of the Carrier that the office in which the list was left was kept locked for the weekend and that, therefore, the new list was not available to the Foreman responsible for the call.

When the list was properly discovered on the Monday following its delivery there was no obligation for the Carrier to add Claimant's name to the working Wrecker Crew. That crew had been constituted by the old list.

We find that the Organization has not proved that the Carrier knew or should have known that Claimant's name was not properly on the Wrecker Call List. Therefore, we will deny the 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 9th day of July 1986.