

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Boston and Maine Corporation

Dispute: Claim of Employees:

1. That the Boston and Maine Corp. (hereinafter referred to as the Carrier) violated the provisions of the controlling Agreement, namely Rule No. 1, Paragraphs (h) and (i), on September 23, 26, 27,, 28 and 29, 1983, at Billerica Shops, North Billerica, Massachusetts.

2. That accordingly, the Carrier be ordered to compensate furloughed Carman F. A. Russo forty (40) hours at the Carmen's straight time rate of pay for the foregoing listed dates due to violation.

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.

The Organization argued that the Carrier had failed to call the Claimant and instead called a junior employee. It is the Organization's contention the Carrier did not make a reasonable effort to contact the Claimant. The Claimant states that he had no trouble with his phone, he was home on September 23, the date in question. The Organization states that the Carrier intentionally by-passed the Claimant in order to recall a junior employee. The Organization argued that this was a violation of Rule 1(h) which states in pertinent part ". . . furloughed employees who have indicated their desire to participate in such relief work, will be called in seniority order for this service . . . ". The Claimant stated he was home and waiting for an assignment, however, his telephone did not ring on September 23. He states that if he was properly contacted he would have accepted the assignment. The Organization cited two Awards which would require the Carrier to verify a telephone call that resulted in a no answer.

The Carrier argued the burden in this case is not on the Carrier; that the Organization must prove that the Carrier had not fulfilled its requirements under Rule 1(h) and (i). The Carrier stated they had called the Claimant on September 23 and there was no answer. They argued there is no Rule or practice that would require the Carrier to determine whether or not a phone is in proper working order. It is the Carrier's responsibility to make a good effort to contact the senior employee and they fulfilled that requirement in this case.

Upon complete review of the evidence, the Board finds that the Carrier did make an effort to call the employee as required by the Rule. The question remaining is: Does the Carrier have the obligation, when faced with a "no answer", to verify whether or not the phone is in proper working order? The Board finds that the Organization has not met its burden of proof to show by any Rule or practice that the Carrier has this obligation. Therefore, the Board finds that under the circumstances of this case, the Carrier had acted in a proper manner and fulfilled the minimum requirements of the Rule in question. The Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of July 1986.