

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12811  
Docket No. 12688  
95-2-93-2-73

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Brotherhood Railway Carmen Division -  
( Transportation Communications  
( International Union

PARTIES TO DISPUTE:

(Chicago & Northwestern Transportation Company

STATEMENT OF CLAIM:

- "1. Carrier violated Rule No. 58 and 60 by not calling Carman Jerry Dirks for a derailment on March 29, 1991. As Claimant was assigned wrecking service he was entitled to be called.
2. Carrier called a Carman who was not assigned to wrecking service and was junior to Claimant in order of seniority for wrecking service.
3. That accordingly, Carrier shall be ordered to compensate Jerry Dirks two and two-thirds ( 2 2/3) hours at the overtime rate, plus derailment pay of \$.25 per hour."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 therein.

Parties in said dispute waived right of appearance at hearing thereon.

This Claim arose because a switch engine derailed on March 29, 1991, in Omaha, Nebraska. The threshold issue is whether the Claimant was called by the Carrier to work on the derailment. The record shows that the Carrier's car foreman stated that he telephoned the Claimant, but that he did not answer the phone. The Claimant, on the other hand, contends that he was home at the time that the Carrier allegedly called him.

In its simplest terms, this dispute involved a statement by the Carrier that it attempted to contact the Claimant by telephone and a statement by the Claimant, although belatedly, that he was home at the time in question, but received no call. This credibility issue was not resolved.

It is well established that the Organization has the burden of proof in cases like this. The Board, based on the evidence presented at this level, has no way of resolving this evidentiary conflict. Therefore, the Board has no alternative but to dismiss the claim.

AWARD

Claim dismissed.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Dated at Chicago, Illinois, this 26th day of January 1995.