



Award No. 14838
Docket No. MW-14552

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold M. Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE DELAWARE AND HUDSON RAILROAD CORP.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the agreement when it did not call and use Trackman John B. Little for service on February 15 and 16, 1962, but called and used junior Trackman Roy A. Dyer instead.

(D&H Case No. 38.62 MW.)

(2) Trackman John B. Little be allowed the same amount of pay as was allowed to Trackman Roy A. Dyer for the work he performed on February 15 and 16, 1962.

EMPLOYEES' STATEMENT OF FACTS: The Carrier called Trackman Roy A. Dyer to work at Saratoga, New York on February 15, and 16, 1962. Trackman Dyer has established seniority rights as of August 23, 1943.

The claimant was furloughed and, on February 15 and 16, 1962, he was at home awaiting a call to return to work. He has established seniority rights as a trackman as of August 26, 1942. His address was on file with the Carrier.

The claimant has resided at the same location for the past 22 years. His point of call has remained the same for the 20 years that he has worked for the Carrier. Ten of these years the claimant has been employed at Saratoga. The Carrier has always called the claimant at this same address and never experienced any difficulty in doing so. The claimant was never previously advised that any difficulty existed in calling him and he always promptly responded when he was called. Foreman Caputo passes by the claimant's home on his way to and from work every day and he knew where the claimant lived.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: This dispute involves the claim of a furloughed trackman account junior employe called for emergency work on February 15 and 16, 1962.

On the dates involved in this dispute, claimant Little was furloughed from his position as trackman in Gang No. 11 at Mechanicville, New York. Carrier records indicate that the last day worked by claimant prior to the days involved in the present dispute was November 1, 1961. Carrier records further indicate that at the time of the claim, Little lived in Gansevoort, New York, approximately 11 miles from Saratoga, and had no telephone in his home.

OPINION OF BOARD: Claimant J. B. Little was on furlough on February 15 and 16, 1962 when the Carrier required extra personnel for emergency snow removal work. Little had no telephone of his own, had not left any neighboring telephone number where he could be reached, and did in fact live several miles from the station involved. The foreman in seeking Little for this emergency work did not know how to reach him and was advised by his Track Supervisor and Brotherhood of Maintenance of Way Employes Chairman Sparano to contact the next main in line. This he did, giving rise to the instant claim. Claimant came to the tool house on February 16, 1962, left the number of a neighbor's telephone, and was called to work by that telephone the following day.

The Organization contends that even though Little did not have a telephone contact, the Carrier was obligated to seek him out and offer him the snow removal work. It points out that the Carrier knew his precise address and violated the parties' Agreement by not seeking him there.

The Carrier acknowledges that normally it would be obligated to seek out the Claimant at his home if unreachable by telephone. But it asserts that the instant case was an emergency, that Claimant had neglected to leave a telephone contact early enough to be reached for this work, and that thus the Carrier was relieved of its obligation to seek out the Claimant in person for the emergency work.

It is clear that the Carrier was unable to contact the Claimant by telephone, to inform him of the emergency snow removal work. The essential question is whether it was required to go beyond that and seek him out at his residence to offer him this work. We find that in this particular case it was relieved of the responsibility of contacting the Claimant at his home because of the emergency involved. There had been more than a foot of snow and Claimant lived several miles from headquarters. In the light of the urgency in clearing facilities, and the absence of a telephone contact, it would have been an unreasonable burden for the Carrier to expend the time and manpower to personally inform the Claimant of available work. Organization quotes three cases as controlling on the question of contacting employees without telephones. Awards 11333 and 11558 dealt with a mandatory notification rule not present in the instant case. Award 11520 dealt with a non-emergency situation. None are controlling in this case.

Accordingly the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute was respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of October 1966.