

Award No. 15487
Docket No. MW-14685

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when, instead of calling and using Track Foreman C. Kimberlin to perform overtime service from 7:30 A. M., January 28, 1962 to 4:00 P. M., January 29, 1962, it called and used a junior track foreman. (Carrier's file VM-1-62.)

(2) Track Foreman C. Kimberlin now be allowed the exact amount of monetary loss suffered because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant C. Kimberlin and N. Morikis have established and hold seniority as track foremen and were both assigned to Section No. 25 at Gary Mill Yard. The claimant is senior to Mr. Morikis in this class. During the period herein involved, both were regularly assigned as track foremen on Section 25 headquartered at Gary, Indiana.

At 7:30 A. M. on Sunday, January 28, 1962, the Carrier called and used Track Foreman Morikis and several track laborers for the purpose of repairing track damaged by a derailment. The work performed by Mr. Morikis consisted mainly of supervising and directing track laborers in the performance of said track repair work. Mr. Morikis worked continuously until 4:00 P. M. on Monday, January 29, 1962 in the performance of this work.

The claimant was available, willing and qualified to perform the work assigned to the junior Track Foreman but was not called or notified to do so.

The Agreement in effect between the two parties to this dispute dated November 29, 1945, (as revised and reissued August 1, 1952), together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: The Organization's dates are in error. The dates involved are Saturday, January 27 and Sunday, January 28,

In handling this case on the property the Organization contended the Carrier violated that portion of Rule 29(a) of its August 1, 1952 Schedule which reads:

"Senior employes, if reasonably available in the respective gangs, will be given preference to calls."

(Exhibits not reproduced.)

OPINION OF BOARD: On January 28, 1962 Carrier called and used Track Foreman Morikis and several laborers to repair track.

Claimant and Morikis both held seniority as track foreman and were assigned to the same section at Gary Mill Yard.

Claimant, who is senior to Morikis received no call for the overtime work on January 28, 1962.

The record reveals that the Claimant resided seven (7) blocks from his work headquarters and was at home on the days involved in this dispute.

Carrier contends that Claimant, not having a telephone in his home to receive calls, was therefore not "reasonably available" within the meaning of Rule 29(a) of the Agreement and Carrier was therefore not required to give him preference for the call for work.

Carrier further contends that, since Claimant had no telephone it was not obligated to contact Claimant personally to inform him of the work possibility.

The issue involved in this dispute can be stated as follows:

"Was the Claimant 'reasonably available' in accordance with the requirements of Rule 29(a)?"

The Board must conclude that the Claimant was reasonably available and was entitled to be given preference for the call for work.

This conclusion is supported by the facts that establish that: Claimant resided in close proximity to his work headquarters; Carrier made no effort to call or reach Claimant to advise him of work opportunity although Claimant was at home and available for work on day in question; no contractual provision in Agreement requires Claimant to have a telephone; record contains no facts relieving Carrier of its obligation to call Claimant nor has justification been shown for its failure to so do; Carrier did not disprove Organization's assertion that practice exists whereby employes have been contacted personally in the past.

Numerous awards of this Board are supportive of the conclusions herein. See Awards 4200 (Carter), 6756 (Parker), 13974 (House), 14917 (Kabaker), 14464 (Kabaker).

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 Employees involved in this dispute are respectively Carrier and Employees 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;

That the Agreement was violated.

AWARD

Claim sustained as set forth in Claim 1, less any compensation earned by Claimant during the claim period involved.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1967.