

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19531
Docket Number MW-19572

Alfred H. Brent, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Chicago and Western Indiana Railroad Company

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

(1) The Carrier violated the Agreement when it called and used an employe junior to Carpenter Howard Buwalda for overtime service on Saturday, April 25, 1970 (System File 413-MoFW).

(2) The Carrier violated provisions of the Railway Labor Act when it failed and refused to specify a time, date and place for conference as requested by General Chairman N. Caputo within a letter dated November 12, 1970.

(3) Carpenter Howard Buwalda be allowed nine and one-half (9-1/2) hours' pay at his straight time rate because of the aforesaid violations.

OPINION OF BOARD: On April 25, 1970, at approximately 6:25 A.M., the Carrier needed bridgemen to repair a bridge that had been damaged. The Carrier therefore placed a telephone call to the claimant, Buwalda, at 7:32 A.M. and, failing to get an answer, called B&B Carpenter Joseph Quinn, among others, who performed the work in question.

The Organization filed a claim contending that Claimant Buwalda was at home at the time the call was allegedly made and therefore the Carrier violated the seniority rules by failing to offer the senior man the available work. There is no dispute that Quinn was junior to Buwalda and the Carrier does not deny that there was only one telephone call to Buwalda.

The issue in this case is: what is a reasonable effort on the part of the Carrier to meet its responsibility under the agreement to call people in order of their seniority? There can be no doubt, as this Board has held many times, that when the overtime is regular, routine overtime, one telephone call to a senior man is not the reasonable effort contemplated by the agreement. This is especially true because the size and computerization of today's telephone services does not always assure that the call will go through as dialed. Awards 13474-16279, 16473-17533 Second Div. 5999, hold that one telephone call does not constitute reasonable effort on the part of the carrier. However, that is not controlling in an emergency situation, as in the instant case, where a bridge had been accidentally damaged and emergency repairs had to be made. The Board has held in Awards #14739, 18706 and 18871 that when there is an emergency the Carrier does meet the requirements of the agreement if only one call was made the claimant.

There are two conflicting versions of the material facts of this case as presented during the handling on the property. There is a statement by the claimant, his wife and son as follows: "This is a verification that I, Mr. H. Buwalda, was at home on Saturday, April 25, 1970. I or my wife or son received no call for me to report for work on date mentioned. Being a senior employee I should have been called by the foreman or person handling the work. But no calls were received by either my wife, son or myself."

This statement by the claimant is in conflict with the testimony of the carrier that a telephone call was made at 7:32 a.m. This Board has neither the authority or competence to resolve such conflict in the evidence and must conclude that the Claimant failed to meet the burden of proof at the hearing on the property. For all of the aforementioned reasons the Board has no alternative but to dismiss the claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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 claim be dismissed.

A W A R D

The claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

EA Killian
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.