

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21396
Docket Number CL-21244

Walter C. Wallace, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, **Express** and Station **Employees**

PARTIES TO DISPUTE: (

(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
GL-7847, that:

1. Carrier violated the Clerks' Working Agreement at **the Yard** Office Everett, Washington, when it failed to make a reasonable effort to call Mr. R. S. Alexander, Relief Clerk, Machine Room, to fill a vacancy in the position of Manifest Clerk C-7 on **February 2**, 1974.

2. Carrier shall now be required to compensate Mr. Alexander an additional eight **(8)** hours pay at the time and one-half rate on February 2, 1974.

OPINION OF BOARD: The **employee** regularly assigned Position C-7 at Carrier's Everett, Washington, yard office facility was out sick on Saturday night, **February 2**, 1974. The position worked from **11:59 p.m. to 7:59 a.m.** The Assistant Chief Clerk on duty called the extra list **employees starting at 11:00 p.m.** and being unsuccessful in reaching them proceeded to call off-duty, regularly assigned employees under the applicable overtime **rule**. As a consequence 16 people were to be contacted including the two extra board employees. Of the remaining fourteen one was working, two did not have phones and six received the call and indicated they did not want to work. The **remaining five, presumably,** were not at home. The Assistant Chief Clerk verified that he called everyone who had a phone one time. Apparently, he was about to start over **again and make** calls to the **same** group when an extra list **employee** returned the call to the yard office and he was instructed to report for work. He was erroneously allowed payment at the overtime rate for eight hours rather than the pm rata which he was entitled to receive under the **rules**.

The claimant hem was fourteenth man on the list and he submitted a claim for eight **hours' overtime** on the basis he is senior to the men who was given the work. The **claimant** maintains that carrier's representative made only one call and this was an insufficient effort under the prevailing conditions. On the other hand carrier maintains this was all that could reasonably be expected under the circumstances. The Assistant Chief Clerk submitted a statement verifying he made only one call to the people involved.

Claimant and his wife submitted statements to the effect they were at home during the time the telephone call was made and the only

call they received was one from a fellow employee, Butler. In addition, Mr. Butler submitted a statement to the effect that he had called claimant **on** the same night at approximately 11:00 p.m.

One question must be considered at the outset. It is carrier's position before this Board that this is not a valid claim because the **posi-**
tion was eventually-filled from the **extra** list albeit the extra man was paid at overtime rates in error. The carrier argument follows that the correct extra man was assigned the work pursuant to Rule 18D and claimant has no valid basis for its claim. The difficulty here is that this **argu-**
ment was not raised on the property and this Board lacks jurisdiction to consider it for the first time.

Proceeding then to the merits of this **claim,there** can be no argument that claimant is a senior qualified man to perform the overtime work **and, absent justification,claimant** should have received it instead of the employee who did. Carrier's justification here is that it wade one call to claimant's residence and there was **no** answer, and acted reasonably and nothing more **could** be expected of it. **The** claimant, in effect, accepts Carrier's assertion that one call was made but adds this is not enough. There is no suggestion that an emergency was involved and the overtime, presumably, was routine in nature.

Rule 37 of the applicable agreement provides for filling short vacancies on an overtime basis by calling the incumbent and if he is not available the vacancy shall be filled by calling the senior available **employee** from the same shift who is **observing** his day or days of rest. The vacancy occurred cm a Saturday night around **11:00** p.m.

The carrier advances the interpretation that **Rule** 38 B has special application here. That rule provides:

"**Unless** notified before quitting **time** of last shift worked, **employees** required to perform overtime work not continuous with regular working hours may be called as far in advance of time to report as is practicable but will not be considered as **unavail-**
able for service until failure to reach him one hour in advance of time required to report."

On the precise question presented, "is one call reasonable under the circumstances?", we do not believe either of these rules provides a clear answer. **Granted,Rule** 38 B indicates special application where there is a failure to reach the **employee** one hour in advance of the **time** required to report. We are still left with the question posed.

Carrier's brief before this Board places s&e stress on the fact that claimant's denials related to "not receiving" a telephone call, making the clear assertion that claimant refused to answer the **call.This is** an

interesting suggestion but the difficulty lies in the fact it was not raised on the property so that claimant could have had the opportunity to respond to the precise charge. Therefore, it comes within the rule requiring us to exclude evidence introduced to the Board for the first time and we **cannot** consider it. On the property the issues were drawn along different lines.

There are awards in this division going both ways on the question presented. This Board has held that when the overtime is regular and routine in nature a **single** telephone call to a senior **employee** is insufficient to satisfy the requirement of reasonableness in the agreement. See Award 16473. However, where there is an emergency situation, the carrier does meet the **requirements** of reasonableness by making only one call, to the claimant. See Award 14739.

Both carrier and **claimant** have cited a number of awards in support of their respective positions. All of these have been carefully reviewed and for the reasons given in Award 16473 the claim is sustained.

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; and

That the Agreement was violated.'

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1977.