

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21707  
Docket Number MW-21778

Irvin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(  
(Milwaukee-Kansas City Southern Joint Agency

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

(1) The Agreement was violated when, on July 5, 1975, an employe junior to Gerald E. **Bayless** was used for overtime service from 7:00 A.M. to 3:00 P.M. (System File 013.31-171).

(2) **Claimant** Gerald E. **Bayless** shall now be allowed eight hours of pay at his time **and one-half** rate because of the aforesaid violation.

OPINION OF BOARD: This is a dispute involving Carrier's alleged failure to **call Claimant** for overtime work on his rest day, calling a junior **employee** instead. The dispute turns on the question of whether or not Carrier's effort to notify **Claimant** to report for the work was adequate. There was no contention that an emergency situation was involved. 1

The **foreman** stated that he attempted to **call Claimant** for the work, but could not reach him. There is no **indication** of when he called or how **many** times he attempted to call. On the other hand, Claimant denies receiving **any calls and** claims he was at home for the entire period in question. He also presented a statement from another person who was with him that day who verified that he did not receive **any** calls. 2

Carrier takes the position that its efforts were adequate. Carrier relies in part on Award 20408, which dismissed a similar **claim on** the **basis** of a conflict in the evidence which precluded a resolution. It is noted, however, that in that dispute there was evidence that **Claimant** had been **called** several times by Carrier and no response had been received. 3

Carrier's efforts to reach Claimant in this instance were simply inadequate, according to the record. We have been faced **with** similar **circumstances** on **many** occasions **and** have held consistently that in the absence of emergency conditions, one attempted telephone call is insufficient (see for **example** Awards 4189, 17533, 20109, 21222, and many others). 4

5 Carrier raises, inter alia, the question of the overtime rate claimed in this dispute. It must be clear that the overtime rate does not constitute a penalty since it was the regular rate of pay for the work on the rest day; the loss of work opportunity on that day mandates consistent reparations for the loss. The Claim must be 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.

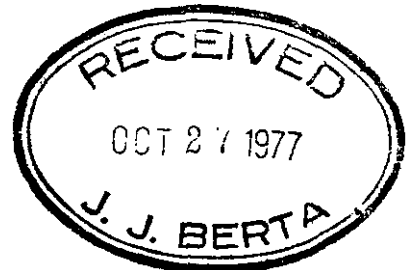
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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 29th day of September 1977.