

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22014
Docket Number MW-22094

George S. Roukis, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Western Maryland Railway Company

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

(1) The Carrier violated the Agreement when it assigned junior trackmen to perform overtime service at Williamsport, Maryland on August 17, 1975 instead of calling D. E. Weller who was senior, available and willing to perform that service (System File 75-11/8-MG-1477).

(2) Trackman D. E. Weller be allowed twelve (12) hours of pay at his time and one-half rate because of the aforesaid violation.

OPINION OF BOARD: This case involves the same emergency situation which existed in Award No. 22013. In this case, however, Claimant who had a telephone in his house was not called to perform the emergency service. Instead, employees junior to him were called for said overtime work.

Carrier advances the following arguments: (i) Claimant had not personally apprised his foreman of his home telephone number (2) Claimant failed to cite on the property any Agreement Rule which had been violated (3) Carrier was not required to search out a telephone number because an emergency existed.

Our review of the record clearly indicates that Carrier's assertion that no Agreement Rule was violated is a new issue. It was not cited on the property. This Board has consistently and emphatically held that it would not consider defenses which were raised for the first time at this appellate level. Third Division case law has impressively institutionalized this procedural standard.

While we recognize that in an emergency situation, Carrier has broad latitude in the assignment of employees which permits bypassing of the normal procedures, we may not overlook Carrier's responsibility to make a reasonable effort to call the senior employee.

See Third Division Award No. 16346. The record herein shows that Claimant's number was listed in the local telephone directory. In our judgement, it would not have been unreasonable to have referred to that source before selecting a junior employee. Inasmuch as this was not the case, we will sustain 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 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 14th day of April 1978.