

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22518  
Docket Number MW-22581

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Baltimore and Ohio Railroad Company

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

(1) The Agreement was violated on Sunday, February 27, 1977, when Trackman Donald G. Hustedde was called and used for overtime service from 7:30 A.M. to 1:00 P.M. instead of calling and using senior Trackman Raymond R. Silvey for such service (System File ST.L-1415/2-MG-1850).

(2) As a consequence of the aforesaid violation, Claimant Raymond R. Silvey shall be allowed pay at his time and one-half rate for an equal amount of overtime as was worked by Junior Trackman Hustedde on February 27, 1977."

OPINION OF BOARD: Both the Claimant, and Employee Hustedde, are regularly assigned trackmen, and both work Monday through Friday, with Saturdays and Sundays designated as rest days. The Claimant is senior to Hustedde.

On the claim date, the Carrier called and utilized the services of Hustedde to clean snow from switches, rather than calling and utilizing the services of the Claimant.

The record indicates that the Claimant was home and available to be called to perform the work in question.

On the property, the Carrier attempted to justify its action because the situation "was an emergency", and Hustedde lived closer to the location in question. Nonetheless, our review of the record confirms that the Claimant was never called and, inasmuch as the distances from each employee's home to the work site is 44.1 miles versus 61.3 miles, there is no reason to conclude that Hustedde could have arrived at the job site significantly earlier than the Claimant; and we are unable to find, from a thorough review of the record, that the Carrier has presented sufficient evidence to warrant our conclusion that, in fact, an emergency existed.

Accordingly, 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 :

G. W. Pauler  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1979.