

NATIONAL RAILROAD ADJUSTMENT BOARD

THIBDDIVISION

Award Number 22535
Docket Number W-22588

Kay **McMurray**, Referee

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

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

(1) The Agreement was violated when, in lieu of calling and using **Trackman Randy** Powell for wertime service on Saturday, January 29, 1977 and on Thursday, February 3, 1977, the Carrier called and used **Junior Trackman** Charles Jones (System File **TOL-1622/2-MG-1854**).

(2) As a consequence of the aforesaid violation, Claimant **Randy** Powell shall be allowed pay at his **time** and one-half rate for au equal amount of wertime worked by Junior **Trackman** Benny Powers on January 29 and February 3, 1977."

OPINION OF BOARD: The "Statement of Claim" in this case makes **reference** to alleged violations of the wertime provisions of the applicable rules agreement on January 29, 1977, and again on February 3, 1977. However, a review of the record as developed on the property clearly shows that there was no claim initiated or progressed on the property for February 3, 1977. Rather, the claim as originally presented and handled at the highest appeals officer's level was for February 4, 1977. Based on this fact, we have no recourse but to dismiss the claim for **February** 3, 1977.

The fact situation relative to January 29, 1977 shows that overtime work was required by Carrier and that an **employee** junior to claimant was utilized. Carrier argues **that** its representative called claimant at the telephone number listed with Carrier and received no answer. Petitioner argues that claimant was at his calling place, ready for service and that he received no call.

Obviously, at this level, the Board has no way of resolving evidentiary conflicts. Neither do we have the authority to administer equity in a dispute. **However**, from the record we note that Carrier, on **November** 4, 1977, offered to settle this dispute by payment of ten (10) hours at the straight time rate in effect on January 29, 1977.

This offer was repeated by Carrier in correspondence dated December 13, 1977, and was cited by Carrier to our Board in their ex parte submission.

Therefore, without ruling on any of the other arguments and contentions advanced by both parties, we are inclined in this case, and based solely on the facts of record before us, to award claimant the payment as proffered, i.e., ten (10) hours at the straight time rate in effect on January 29, 1977, which equates to six hours and forty minutes (6' 40") at the overtime rate, as full, final and complete settlement of this case.

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 in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of **September 1979**.