

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22920
Docket Number SG-22994

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore & Ohio Railroad Company:

On behalf of Signalman Tobin C. Jackson for 16 hours at time and one-half and one hour double time account Rule 14(g) being violated when junior employee, Roger D. Lemaster, was called for overtime service on May 21, 1978, at 'F' Interlocking because of derailment." (Carrier file: 2-X-554)

OPINION OF BOARD: In this dispute Claimant contends that Carrier violated Rule 14(g) of the Signalmen's Agreement when it assigned Signalman Lemaster to perform wertime work on Sunday, May 21, 1978, as a result of a derailment at 'F' Interlocking, Washington, D. C. Claimant argues that he was home that day prior to 3:00 P.M. but did not receive a call from Carrier officials. He asserts that as the senior employe in Regional Force 1734, he was entitled to this assignment pursuant to Rule 14(g). This Rule provides that:

"When wertime service is required of a part of a gang or group of employees, the senior employees of the class involved, who are available, shall have preference of such wertime, if they so desire."

Carrier, contrawise, contends that it called each employe assigned to Unit 1734 three times, including the Claimant, but was unable to reach any of them, except Signalman Lemaster, which was on the third call. In view of this emergency, it asserts that prompt action was necessary to rectify the situation and thus assigning Signalman Lemaster to perform this work was consistent with its emergency powers and the ruling of this Board relative to emergency assignments.

In our review of this case, we concur with Carrier that an emergency existed. The derailment at the 'F' Interlocking location damaged a switch needed to route passenger trains into and out of the Washington, D. C. Terminal and immediate action was needed to permit movement of passenger trains.

While an **emergency** by definition would properly vest Carrier with a broader latitude of authority to deploy **personnel** in a **manner** conducive to the decisive resolution of the problem, we do not believe this to be the primary issue before us.

Claimant argues that he was home on May 21, 1978 prior to 3:00 P.M. and did not **receive** a call. He submitted a notarized affidavit dated September 22, 1978 to attest to this assertion. Carrier contends that it called him at **8:15 A.M.**, **8:40 A.M.** and 9:00 A.M. and submitted a letter, dated **December 13**, 1978 which was signed by Supervisor **Esworthy** that said calls were made. There is no clear showing that either position is absolutely correct, although there is a strong presumption that the calls were **made**. In Third Division Award 21423 involving a conceptually similar dispute we held that:

".... the Board has no way of resolving **evidentiary** conflicts. We have neither the authority nor the competence to resolve such conflicts in the evidence of record. On the state of this record, the Board has no alternative but to dismiss the claim."

(See also Third Division Awards 20408 and 18871).

We believe this decision is directly on point with the discernable facts herein and thus we **must** deny 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 not violated.

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Claimdenied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this **22nd** day of July 1980.