

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23404
Docket Number MW-23291

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees**
(**The Western Pacific Railroad Company**

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

(1) The **Carrier** violated the Agreement when it failed to use Section **Foreman** Antonio Atencio to perform overtime service at **Camp Rogers** on October 29, 1978 (System File B- **Case No. 11539-1979-BMWE Local Case No. 268 Morf**)."

(2) Section **Foreman** Antonio **Atencio** be allowed **nineteen (19)** hours of **pay at his time** and **one-half rate** because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Organization claims that **Carrier** violated the Agreement when it failed to **use Claimant**, Section Foreman Antonio Atencio, to perform **overtime service** at **Camp Rogers** on October 29, 1978. The Organization seeks **nineteen (19)** hours pay at the time **and** one-half rate because of the alleged violation.

The evidence presented **establishes** that Carrier contacted Claimant and told him to get a crew and depart Little Valley at 2:00 A.M. on October 29, 1978 so as to arrive at **Camp Rogers** by 6:30 A.M. to fix a derailment. Mr. Malette, the driver of **Carrier's** vehicle, arrived at Claimant's home at about 11:00 P.M. and found the **house** to be totally dark. The driver, therefore, left to pick up the rest of the crew. As a **result** of missing this ride to **Camp Rogers**, Claimant performed no service for the **Carrier** on October 29, 1978. Since Claimant's regular workweek **is** Monday through **Friday**, work on **Sunday, October 29th** would have been **compensated at the overtime rate**.

The responsibility for **Claimant's** failure to work on October 29, 1978 must be shared by both the Carrier and the Claimant. The Carrier failed to clearly **communicate** to the Claimant that the **Company** truck assigned to Claimant, and being used by Malette to transport a crew to **Dunsmuir**, would **pick him** up before 2:00 A.M. The Carrier must also bear the **responsibility** for **Malette's** failure to attempt to contact Claimant for the early trip to **Camp Rogers**.

The Claimant, however, must bear the responsibility for failing to take **any steps** to contact the **Employer** or to arrange alternate transportation to the derailment site once it was apparent that he had missed **his** ride.

Rule 39 of the Agreement (amended effective March 1, 1974) provides:

"**Employees sent away from their home station, headquarters point, or moved from one work location to another, shall be furnished with free transportation by the Company in traveling from his home station or headquarter point to another point and return or from one work point to another.**"

"**If such transportation is not furnished, the employee will be reimbursed for the cost of public transportation used or if he has an automobile he is willing to use and the Company authorizes him to use said automobile, he will be paid an allowance of 9¢ for each mile traveled from his home station or headquarters points to the work point and return or from one work point to another.**"

Once it became clear to the Claimant that **Carrier transportation would not be taking him to Camp Rogers, Claimant should have sought public transportation or other means to reach the job site. Rule 39 indicates that the employee would be compensated if such alternate methods of transportation were used.**

The Claimant offered no evidence **of any attempt to** arrange alternate transportation, nor did he indicate any reasons for **failing to find** other means of transportation. For **this** reason, the Claimant should not be permitted to collect pay for the full nineteen (19) hours of work missed.

In **view** of the fact that the **Carrier's** employee, **Malette**, made no significant effort to contact Claimant, and **since** Claimant reasonably did not expect to be picked up before **2:00 A.M.**, we **find** that Claimant was available for **work**. The appropriate **remedy** is that **Claimant be compensated at the rate of time and one-half for one (1) day's pay.**

One final point: **Carrier argued that daylight savings time may have accounted for the lack of readiness of Claimant. This argument is unpersuasive for the change in time would, at best, account for only one hour difference in time. Claimant cannot reasonably have been expected to be ready more than an hour before his Scheduled pick-up time.**

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~~ the Opinion.

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

ATTEST:



Executive Secretary

Dated at Chicago, Illinois, this 6th day of October 1981.