

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24270
Docket Number MW-24256

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { (Brotherhood of Maintenance of Way Employee
{ Terminal Railroad Association of St. Louis

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

(1) The Carrier violated the Agreement when it assigned junior Track Foreman W. Bailey to perform overtime service on February 29, March 1 and 2, 1980 instead of calling and using Track Foreman R. Glenn who was senior, available and willing to perform that service (System File TERRA 1980-10).

(2) Track Foreman R. Glenn shall be allowed thirty-seven and one-half (37-1/2) hours of pay at his time and one-half rata and eight (8) hours of pay at his double time rate because of the aforesaid violation."

OPINION OF BOARD: This claim concerns the right of Claimant, Track Foreman R. Glenn, to overtime work for February 29, March 1 and 2, 1980 at Carrier's East St. Louis District. On February 29, 1980, account of inclement weather conditions, Carrier found it necessary to call out employees to light switch heaters et various locations on the property.

According to Carrier. at 8:35 p.m., Track Supervisor C. F. Boyer, telephoned the residence of Claimant in order to ascertain his availability to perform the required services. When Boyer received no answer at Claimant's listed telephone number, he telephoned Track Foreman W. Bailey, who is junior in service to the Claimant, to perform the required work. As a result of Carrier's actions, Bailey performed overtime work for Carrier on February 29, March 1 and 2, 1980. Claimant performed no service on those dates.

The Organization contends that Carrier violated Rule 81(g) of the Agreement when it bypassed Claimant, in favor of a junior employee, on the three days in question. That Rule provides:

'RULE 31
OVERTIME

(g) Overtime work required following and continuing with the regular eight (8) hour work period shall be performed by the necessary senior employees working on the job.

Senior available employees will be given preference in performing overtime work on call basis within the jurisdiction of their respective seniority groups (gangs involved in Track Sub-Department). This not to interfere with work on unassigned days covered by Paragraph (f) of this Rule."

The **Organization maintains** that **Claimant**, as the senior qualified employee, was clearly entitled to the **work** in question. It argues that Carrier has **introduced** no probative evidence that it actually telephoned Claimant on the evening of February 29, 1980. In fact, according to the **Organization**, Claimant **was home** that evening, as well as the entire weekend, and received no telephone call from Carrier.

In addition, the **Organization** points out **that** no attempt to telephone Claimant was made on March 1 or March 2, 1980. In the **Organization's** view, Carrier was obligated to call **Claimant** on those days even ff it could not reach him for February 29, 1980. For these reasons, the **Organization** asks that the claim be **sustained** and that the **Claimant** be compensated a total of forty-five and one-half (45½) hours et his **time** and **one-half** or double time rate, whichever is appropriate, account of his being bypassed in favor of a junior employe for work performed on February 29, March 1 and 2, 1980.

Carrier, on the other hand, contends that it fully **complied** with Rule 31(g). First, it notes that it has consistently maintained that it did try end reach **Claimant** by telephone et 8:35p.m. on February 29, 1980. According to Carrier, the **Organization** has the burden of showing that it made no attempt to contact the Claimant cm that evening. The **Organization**, in Carrier's view, has **not met this burden**.

In addition, Carrier insists that having tried and failed to reach the **Claimant** on February 29, 1980, it **was** not obligated to telephone him during the rest of the weekend to determine his **availability** for work. The Agreement, Carrier notes, does **not** require multiple calls to **employees** to perform **overtime** service on **more than** one day in succession.

Given the severe **weather conditions**, Carrier argues that **it** had to act quickly to **maintain** its operations. It phoned **Claimant first since he was** the senior qualified **employee**. When he did not answer, Carrier called other **employees** until it found the **number of individuals** it needed to complete the necessary work. Accordingly, Carrier maintains that it acted **reasonably** end in • ccordence with the Agreement. In short, **it asks thettthe claim be denied**.

This dispute centers **on** the reasonableness of Carrier's attempts ff **any**, to **determine** Claimant's **availability** for the **overtime** work which had to be performed on February 29, March 1 end 2, 1980. The record contains **substantial evidence** that Carrier did telephone Claimant's phone **number** at about 8:35p.m. on February 29, 1980. Whether **Claimant** was **Not** at **home** or did not hear the phone ring it not relevant. The fact is that Carrier did attempt to reach him, but without success.

Moreover, in this instance, **it** is not reasonable to require Carrier to make multiple phone cells to Claimant to ask him to work on **a given day**. **This** is true because the adverse weather conditions required that Carrier act with dispatch to maintain its **operations**. **Thus, we conclude that Carrier's single phone call to Claimant was sufficient, in this special instance, to absolve itself of any liability for work performed by a junior employe on February 29, 1980.**

However, a different conclusion must be reached with respect to work performed on March 1, 1980 end March 2, 1980. Here, Carrier had ample time to renew its attempt to contact Claimant to discover whether Claimant was still unavailable. In addition, there is no showing that Claimant, by virtue of his being unavailable for work in the early part of the weekend, was similarly unavailable for work later in the weekend. Simply stated, Carrier's failure to attempt to contact Claimant after the evening of Friday, February 29, 1980 was unreasonable. As the senior qualified employee, Claimant had a right to expect that Carrier would telephone him for work on March 1, 1980 end March 2, 1980, even if he was unavailable for work which was performed beginning 8:30 p.m. on February 29, 1980. See Award No. 22922. Accordingly, we will order that Claimant be compensated in accordance with the provisions of Rule 31(g) for over-time service commencing 3:30 p.m. March 1, 1980 and continuing to 6:00 p.m. March 2, 1980.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds end 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; end


That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.