

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24524
Docket Number MW-24439

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it assigned junior B&B Mechanic B. C. Casteneda, Jr. to perform overtime service on August 11 and 12, 1980 instead of calling and using B&B Mechanic T. L. Edmons who was senior, available and willing to perform that service (System File 180-400.33- 8030/11-1580-220-291)..

(2) B&B Mechanic T. L. Edmons shall be allowed eight (8) hours of pay at his time and one-half rate, six and one-half (6-1/2) hours of pay at his double time rate and four (4) hours of pay at his one-half time rate because of the aforesaid violation."

OPINION OF BOARD: Despite the Carrier's allegations to the contrary, the Board finds that Bridge and Building Mechanics were to be called in seniority order for certain overtime work in their classification, as indeed the Carrier states was done. It is the Carrier's contention that five Mechanics were called for such duty, then the Claimant (sixth in seniority order), and finally the seventh employee in seniority order, who responded and worked the overtime in question.

The Carrier argued that the Claimant was called by telephone once for the overtime assignment and that the telephone was not answered. Claimant provided a statement by his wife that she was at home at the time the call was supposedly made but that she received no call.

A signed statement by the Foreman who allegedly made the call was submitted for the first time by the Carrier in its rebuttal to the Organization's submission. Since it was not provided on the property during the processing of the claim, such statement may not be considered by the Board.

The Claimant has standing in the dispute, even if not the employee first in seniority, since those senior to him may, in fact, have been unavailable and, in any case, made no claim for the work.

The dispute is one of fact rather than of rule interpretation. On the record before it, the Board determines that the claim should be sustained to the extent of payment to the Claimant of four hours' pay at the time and one-half rate.

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:



Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September, 1983.