NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24758

THIRD DIVISION Docket Number SC-24843

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Terminal Railway Company:

On behalf of R. T. Frye for nine hours' pay at time and one-half the hourly rate for signal maintainer, account Carrier did not call him for overtime work pursuant to Rule 311(a) of Article III of the Agreement after a derailment on or about June 27, 1981 at Zone 6. [Carrier file: SG-1.82.170]

OPINION OF BOARD: By letter dated August 17, 1981 the Organization initiated a pay claim on behalf of the Claimant, R. T. Frye. The Organization's claim states that the Carrier did not call the Claimant to work, who was on a call list, in alleged contravention of Agreement Article III, Rule 311(a). This Rule states the following:

> "RULE 311:
>
> (a) A call list will be prepared listing, in seniority order, of the class involved, names, address and telephone number of employes who have given the Carrier a written notice of their desire to be called and used for casual vacancies in Signal Maintenance and emergencies, that cannot be filled or performed by regular assigned maintenance employes, which arise outside of their regular assigned hours. Employes who do-not give the Carrier such written notice will not be called for such vacancies or emergencies."

There is no dispute of fact here that Mr. Frye had prior seniority claim to be called for emergency work on or about June 27, 1981 because of a derailment. What is at dispute is whether the Claimant had been contacted by the Carrier.

For its part, the Organization, as moving party, claims that Mr. Frye's phone was connected to a Code-A-Phone machine on tbe day in question. The machine had been won by his wife as a prize from a certain Deco Plants Company approximately three (3) weeks prior to the incident at bar. A copy of the answering machine warranty and two notarized statements were presented by the Organization on property The first statement dealt with the fact that the Frye's did own the Code-A-Phone machine, and the second was a sworn statement to the effect that the machine had been installed and was operating on June 27, 1981 and that the Frye's were home and asleep on #at date at the hour when the Claimant was allegedly called. Thus, if any calls would have been made, these calls could have been recorded on the answering machine.

Evidently the instant case hinges on whether call(s) were made to the Claimant on the date and time in question, and on whether the answering machine was operational at that time, and on why, if it was, the Carrier officer did not use the machine.

If the Claimant and his wife had been asleep at the time in question, it appears reasonable that they would have been awakened if the phone had rung.* There is nothing in the record that questions their presence at home on the date and time in question.

In its defense on property the Carrier attests and reasons as follows. It first of all states that two (2) calls were made and that there was no answer. Secondly, it argues that even if a recorded message had been left, this would not have represented a solution to its immediate personnel needs on the day in question, given the emergency situation, since the Claimant admitted that he was asleep. With respect to the first position, the Carrier offers no corroborating evidence beyond the statement that calls had been made, that no one answered the phone, and that this "was commented on by employees in the office" of the Chief Engineer. The record provides no information, although it could have, on who these employees were as corroborating witnesses. The second position of the Carrier, with respect to the futility of leaving a message since the Claimant was asleep anyway, is rejected by the Board. From the record, knowledge that the Claimant was asleep is post facto knowledge on the part of the Carrier which Carrier officer could not have known when the alleged call(s) were made.

The National Railroad Adjustment Board has consistently leaned, with appropriate exceptions being taken into account, in favor of Carriers when credibility issues are at stake (Third Division Awards 19487, 21759 and 22145). The instant case represents one of those exceptions. The Carrier has not sufficiently responded to the claim of the moving party in terms of substantial evidence which has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed.Co. vs Labor Board 305 U.S. 197, 229). The Board, therefore, will sustain 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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, i934;

(*) Certain information introduced into the record with respect to the actual functioning of the answering machine is inappropriately there since such information was not introduced in the handling of the case on property (Third Division Awards No. 20841 and 21463).

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of March, 1984