

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26186
Docket Number MW-26446

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
(Northern Region)

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

(1) The Carrier violated the Agreement when it failed to recall furloughed Trackman G. R. Perlberg to service on and subsequent to April 2, 1984 (System File C-TC-2141(a)/MG-4641).

(2) Claimant G. R. Perlberg shall be allowed pay equal to that paid to a junior trackman beginning April 2, 1984 and continuing until the claimant is recalled to service."

OPINION OF BOARD: This Claim involves the contention of the Organization that Claimant should be compensated for all time worked by employees junior to him on Track Supervisor Jozwiak's territory beginning April 2, 1984, and continuing, account Carrier's alleged failure to recall Claimant in accordance with his seniority.

Carrier bases the denial of this Claim on the fact that after Claimant was furloughed on September 27, 1983, he failed to file a recall request within fifteen days, as required by Agreement, or at any time subsequent to his furlough. Consequently, Claimant was out of service.

The Organization counters that Claimant, in compliance with Rule 5(b), did file his name and address with Carrier in an effort to protect his seniority. Thus, Carrier's failure to recall Claimant when forces were being increased on April 1, 1984 caused Carrier to be in violation of Rules 5 and 13.

In disputes such as this, the Organization ultimately bears the burden of proving its Claim. Upon a complete review of the record, we find that the Organization has not done so in this instance. A cardinal tenet of the Railway Labor Act is that all relevant evidence must be addressed on the property. In the course of presenting its Submission to this Board, the Organization alleged for the first time that Claimant filed his name and address through his Foreman with the Manager-Engineering and provided, also for the first time, a copy of a recall request that Claimant allegedly completed and submitted on October 2, 1983. Because this information was not introduced on the property, it cannot be considered here.

Based on a review of the evidence that was appropriately submitted, we do not find sufficient grounds to support the Organization's Claim. As noted in Third Division Award No. 26001 on this property, with the same Organization: "... Carrier has no way to prove the negative that no notice came to its attention. The Organization must take the affirmative in this instance and prove its assertions." As a consequence, the Claim must be denied.

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

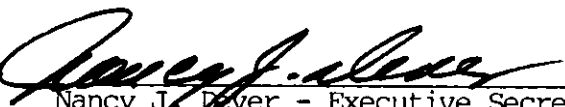
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of November 1986.

