

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

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 B. C. Mattson on and subsequent to September 12, 1983 (System Docket CR-723).

(2) Division Engineer H. J. Deeds failed to disallow the claim presented to him under date of November 2, 1983 as contractually stipulated within Rule 26(a).

(3) As a consequence of either Part (1) and/or (2) above, the Claimant shall be allowed

'8 hours per day, at five days per week, and any overtime that should have accrued to Mr. Mattson from September 12, 1983 to October 6, 1983.'"

FINDINGS:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

As of September 12, 1983, Claimant was on furlough from his position as a trackman at Carrier's Morrisville, Pa., facility. On November 2, 1983, the Organization filed a claim on Claimant's behalf, contending that Carrier had improperly recalled two junior trackmen, instead of Claimant, as of September 12, 1983. Claimant had been recalled on October 5, 1983.

Form 1
Page 2

Award No. 27178
Docket No. MW-26563
88-3-85-3-308

The Board, in reviewing this case finds that Organization contends Carrier failed to timely respond to the claim in the first instance. Carrier contends it never received the claim in the first instance. The Organization contends Claimant was not recalled in seniority order. The Carrier contends otherwise.

The record and the correspondence exchanged on the property does not contain sufficient evidence to sustain either parties' position on either issue. When such irreconcilable differences occur we have no other recourse than to dismiss the claims.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.