

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman 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 assigned a junior employe to perform overtime service on February 23, 1984, instead of calling and using Mr. C. Neff, Jr., who was senior, available and willing to perform that service (System Docket CR-868).

(2) Claimant C. Neff, Jr. shall be allowed seven (7) hours of pay at his time and one-half rate."

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 employes 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.

At the time this dispute arose, Claimant was employed by Carrier as a Class 3 Operator. On February 23, 1984, Carrier called in a junior employee to work on a derailment from 12:30 a.m. to 7:30 a.m.

As a result, the Organization filed this claim. Carrier timely rejected it. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that Claimant was ready, willing and able to perform the disputed work. In support of this contention, it alleges that Claimant's supervisor was given Claimant's home telephone number. Thus, the Organization submits, Carrier had but only to dial a number to apprise Claimant of the available overtime. Therefore, the Organization asks that the claim be sustained and that Claimant be paid seven hours at the overtime rate.

Carrier disputes Claimant's contention that it was in possession of Claimant's home telephone number on the day in question. It insists that a

check of its records found no such listing. In fact, Carrier notes, twelve days after the incident, Claimant provided all his foremen with his unlisted home telephone number. Thus, Carrier asserts, Claimant's later actions reveal his failure to give his supervisor the unlisted number prior to February 23, 1984.

Finally, Carrier contends that payment at the punitive rate is not appropriate where the time has not been worked. Accordingly, and for these reasons, Carrier maintains that the claim must fail.

A review of the record evidence convinces this Board that the claim must be sustained. The record reveals that while Carrier's "snow book" may not have recorded his number, the person responsible for the calling did have it. In November 1984, Claimant's Supervisor telephoned his home on an unrelated matter. The call was placed from Carrier's office. Thus, claimant did sufficiently apprise Carrier of his home telephone number even if he gave more formal notification after the incident. Under these circumstances, Carrier clearly did not comply with Rule 17 when it called in a junior employee to perform the overtime.


Furthermore, we are convinced, Claimant is entitled to pay at the and one-half rate. This is the rate he would have gotten, had he been timely called. As such, he must be made whole for Carrier's violation of the Agreement. Accordingly, and for the foregoing reasons, the claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1988.