

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 27701  
Docket No. MW-27308  
89-3-86-3-421

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(National Railroad Passenger Corporation  
(Amtrak) - Northeast Corridor

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

(1) The Carrier violated the Agreement when it assigned Plumber J. Scheck to perform overtime service on February 10, 1985 instead of calling and using Plumber F. Lawler who was senior, available and willing to perform that service (System File NEC-BMWE-SD-1266).

(2) Plumber F. Lawler shall be allowed six and one-half (6 1/2) 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 employee or employees involved in this dispute are respectively carrier and employee 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.

On February 10, 1985, a Sunday, Carrier needed a plumber to make a repair on a frozen water line at its Penn Coach Yard. It first attempted to call Claimant, however, his phone was busy at the time. Carrier then called the next senior plumber who responded and worked 6 1/2 hours on the repair. Claimant is seeking compensation at the time and one-half rate account not being used.

It is our view that in the circumstances of this case, a single phone call that cannot be completed because of a busy signal is an insufficient attempt to locate a senior employee for overtime work. In Third Division Awards 4189, 16473, 17062, 17182 and 19658 we upheld claims on the basis that a single phone call did not constitute a reasonable effort to contact an employee with an offer of work he was entitled to accept. We will do the same in this matter and sustain the Claim for 6 1/2 hours pay.

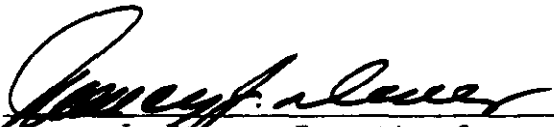
It is argued that in the event reparations are required that payment should be at the straight time rate rather than at the time and one-half rate as claimed. We have reviewed a number of Awards on this point which exhaustively considered this issue. We have also reviewed a number of Awards between these parties which clearly demonstrate that on Amtrak properties the prevailing practice, concurred in by the Organization, is to allow straight time for missed overtime work. On the basis of this practice, accepted in the past by the Organization, the Claim will be allowed at the straight time rate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of February 1989.