

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27824
Docket No. MW-27295
89-3-86-3-402

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it assigned junior trackmen to perform overtime service on December 24, 1984 instead of using Trackman D. L. Replogle who was senior, available and willing to perform that service (System File 130-33-8521/11-1580-220-446).

(2) Trackman D. L. Replogle shall be allowed fifteen (15) 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.

This Claim arose when Carrier assigned a junior Trackman to perform overtime service on December 24, 1984, instead of using Claimant. The Organization contends that Claimant was senior, available and willing to perform the work, but was not called by Carrier.

Carrier argues that contact was attempted by telephone between 2:30 A.M. and 3 A.M. and no one answered the call.

The dispute arose as the result of a derailment that occurred at approximately 2 A.M. on Monday, December 24, 1984 (a holiday) at Herman, Oklahoma, which impeded train traffic on the mainline.

In the opinion of the Board, this was an emergency that demanded immediate attention to open up the mainline. Carrier called and used all available forces in the area, including men from the Waynoke Section, Amarillo, Texas, Wellington, Kansas, and points in between.

The Board recognizes that even in emergency situations, Carrier is obligated to make a reasonable effort to reach the employee or employees entitled to the work.

Carrier contends that it attempted to contact Claimant by telephone and there is nothing in the record to dispute that assertion. At the same time, both Claimant and his wife stated that they were at home at the time in question and received no call. There is also nothing in the record to dispute that contention.

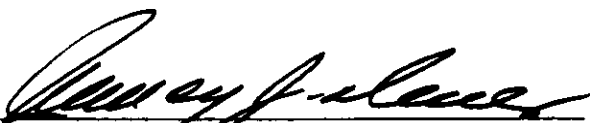
It is well established that the Organization has the burden of proof in such cases. Based on the evidence presented to the Board, there is no resolution to this fact situation and therefore this claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.