

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Ronald T. Beffert

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Violation of Rule 4 Section 1 & 3 Per time claim CR1581 on dates Jan 21 Jan 22 Jan 23 Jan 25 Jan 26, 1985"

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 employees 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 27, 1985, the Organization filed a claim on behalf of the Claimant for various days in January of that year on grounds that the Carrier had been in violation of the Agreement when it recalled two employees junior to the Claimant to perform "...MW snow duty." The claim was denied. The Carrier's reason for denial of the claim was that "since (the Claimant) could not be reached" after the Track Supervisor attempted to do so, the next two employees on availability basis were contacted and they worked. The Carrier does not deny that these employees who were on furlough had less seniority than the Claimant. The Carrier does contend that the work was temporary, and that the work was emergency work. As evidence that a call was made to the Claimant the Track Supervisor who made the call provided the Carrier with a statement to that effect. This statement is part of the record. According to this statement the Supervisor "tried to call (the Claimant) from (his) office in Niles, Ohio at approximately 8:00 AM on January 21, 1985, and received no answer." The statement goes on to say that because of the "severity of the situation, it was necessary to call the next senior employee." The statement also says that another employee was present when the call was made and could corroborate the truthfulness of the statement.

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89-3-86-3-183

The basis of the instant claim is the contention by the Claimant that he was home on the day and hour in question when the Supervisor "alleged" that he placed the call. The Claimant contends that he was ready and willing to work.


The Board is confronted with an apparent conflict of evidence. There is sufficient documentary proof, however, provided by the Carrier to warrant the reasonable conclusion that a call was made to the Claimant. Although there is no direct proof of this, it is reasonable to surmise that the Claimant may have been momentarily out of earshot of his phone when the call was made on January 21, 1985. In view of the record as a whole the Board is unable to conclude that the Claimant has met his burden of proof as he must in this case as moving party. "Assertions are no substitute for proof according to substantial evidence criteria" (Third Division Award 25575; also Fourth Division Awards 3379, 3482; Public Law Board 3696, Award 1). The claim must be denied.

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 13th day of April 1989.