

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28015
Docket No. MW-27363
89-3-86-3-592

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad Company

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

(1) The Agreement was violated when the Carrier failed and refused to compensate Section Foreman J. A. Lemaster for standby service he rendered on August 3 and 4, 1985 (System File BN-13-85/DMWD 84-10-08).

(2) Section Foreman J. A. Lemaster shall be allowed thirty-three (33) hours of pay at his appropriate overtime 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 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.

At approximately 7:40 P.M. on Friday, August 2, 1985, two of Carrier's freight trains collided head on between Denver and Boulder, Colorado. Five crew members were killed in the collision, and the resulting blast destroyed an overpass of the Boulder Turnpike. The Organization contends that Claimant, a Section Foreman, should be compensated for an amount of time equal to the time worked by his subordinates, who were called for service over the weekend in connection with the collision.

The Organization bases its Claim upon the assertion that Claimant had been told by his Roadmaster on Friday that he was to remain available for call for service over the weekend. They submit that Claimant complied with this request by remaining at home readily available for a call to duty, thereby being deprived of his right to pursue his own interests and activities without restriction. Furthermore, the Organization argues that Claimant should have been called for service because two of his subordinates were called, thereby making his supervisory duties necessary.

The Carrier has denied that Claimant was told to remain on standby for the weekend. First, they assert that the Roadmaster was on vacation and would not have been in a position to issue such an order. Secondly, they suggest that, at most, Claimant was being reminded that Section Foremen are always subject to duty. Nevertheless, the Carrier avers that an attempt was made to call all available employees on the subdivision, including Claimant, starting at 7:00 A.M. on August 3. The Roadmaster's clerk called each name once, letting the phone ring five or six times. If Claimant did not work, the Carrier contends it was because he was not available when called.

This Claim can either be characterized as a Claim for pay for being held in a stand-by status, or as a Claim for not being called for the derailment. It cannot be both, and the Organization has not made it clear through its handling of the dispute how they choose to characterize it. We are guided somewhat by the Claimant's reason for the Claim being presented. In referring the Claim to the General Chairman, he wrote, "A trackman on my section worked derailment at mile post 12.0 in Colorado." Furthermore, the compensation claimed is equal to the time worked by the trackman and bears no relation to the amount of time Claimant was allegedly held on stand-by.

The Carrier argues it should be relieved of any obligation to Claimant because an attempt was made to call him for service. Not answering the phone, Claimant was considered unavailable for service. The Organization responds by noting that the Carrier's documentation was furnished too late to be given any credence. Statements from the clerk and the Roadmaster were sent to the Organization on May 9, 1986, although the Claim was first filed on September 4, 1985. Furthermore, the Organization argues it is well established that the Carrier has an obligation to call an employee a second time in situations such as this. The Carrier objected to both of these arguments as they were not made on the property. The record supports the Carrier's objection, and the Board will consequently consider that Claimant had been called for service and was not available. We further conclude there is insufficient evidence of record to establish the Claimant was directed to remain at home and wait for a call.

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 31st day of July 1989.