

The Third Division consisted of the regular members and in addition Referee Lamont E. Stallworth 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 a junior plumber to perform overtime service on June 12, 1985, instead of calling and using Plumber R. Corbitt who was senior, willing and available to perform that service (System File NEC-BMWE-SD 1352).

(2) Plumber R. Corbitt shall be allowed ten (10) 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 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.

Claimant holds seniority as a Plumber. In June 1985, Claimant was regularly assigned to Gang 1052, headquartered at Philadelphia, Pennsylvania.

At about 10:00 P.M. on June 12, 1985, the Plumber Foreman of Gang 1052 received a call advising him that there was no water at the Carrier's 30th Street Station in Philadelphia. According to the Carrier, this situation required that the Foreman contact plumbers immediately to report to the 30th Street Station to restore the water. The Carrier states that the Foreman telephoned several plumbers, including Claimant, in seniority order, but was unsuccessful in reaching most of them. Eventually, the Foreman contacted a plumber with less seniority than Claimant, who came and worked from 10:00 P.M. on June 12 to 8:00 A.M. on June 13, 1985.

The Organization contends that Claimant was available to work on the night of June 12, 1985, but in fact was not called by the Carrier. The Organization argues that the Carrier thus violated Rule 55(a) of the Agreement, and is liable to Claimant for his loss of earnings on that occasion, at the overtime rate.

Rule 55 states:

"Preference for Overtime Work

(a) Employees residing at or near their headquarters will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them, in order of their seniority."

It is undisputed that Claimant resides near his headquarters, that he was qualified for and ordinarily performed work like that in question, and that Claimant was senior to the junior plumber who was called and performed the overtime assignment on June 12 - 13, 1985. The Claim thus hinges on whether Claimant was "available" for the assignment and whether he was called to perform it before the junior plumber.

The Organization states that it knows Claimant was not called on June 12, 1985, because Claimant had a telephone answering device attached to and operating on his telephone line that evening, which recorded no message from the Carrier. Once this Claim was presented on the property, the Foreman prepared a handwritten statement recapping his efforts to locate plumbers on the night of June 12, 1985. His statement, contained in the record, asserts that he called Claimant but got no answer. The statement goes on to acknowledge that the Claimant asserted he had an answering machine working that evening. The Foreman's statement then states: "I may have dial[ed] the number incorrect[ly]."

The Organization contends that the fact that no message from the Foreman was recorded on Claimant's answering machine proves that Claimant was not called before the junior plumber as required under Rule 55. The Carrier disputes this, arguing that the Foreman was not obliged to leave a message on the machine, since the very fact of the machine answering the call indicated that Claimant was unavailable. However, the Foreman's statement expressly acknowledges that he may have mis-dialed Claimant's telephone number. If so, Claimant was never given the opportunity to accept the assignment, as required by Rule 55.

The Carrier contends that even if the Foreman mis-dialed Claimant's telephone number, thereby denying Claimant the opportunity to accept the overtime assignment, such an inadvertent error does not constitute a violation of Rule 55(a). However, as the Organization points out, precedent holds that a Carrier must make more than a single attempt to phone a senior employee before giving an assignment to a junior employee, unless the Carrier is confronted by an emergency which precludes making a confirmed call to the former. See, for example, Third Division Awards 19658, 17182, 17183, and 16473. Those Awards

hold, even in cases where the Carrier's caller has not admitted the possibility that he mis-dialed, that the Carrier should have placed a second call to the senior employee to make certain that the first call did not go astray.

The record reflects that the Foreman did not dial Claimant's number a second time before contacting the junior employee on the date in question. The Carrier has not established that emergency circumstances existed on that occasion to preclude such a second attempt. The absence of any evidence of an emergency, coupled with the Foreman's admission that he may have mis-dialed Claimant's number, requires that the Organization's position be upheld.

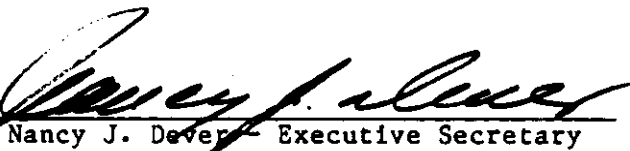
However, Claimant is not entitled to recover his lost earnings at the punitive or overtime rate sought in the Claim. Precedent establishes that prevailing practice on the Carrier's property is to pay straight time for missed overtime work. See Third Division Awards 27701, 27150, 26534. Accordingly, the Claim will be sustained for payment at the straight time or pro rata 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. Dever, Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.