

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

On behalf of R. M. Gardea, for payment of 20 hours pay at his punitive rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, when it allowed or permitted junior employees to work overtime on April 22 and 23, 1989." Carrier file SIG 125-219. BRS file Case No. 7897-SPTC-WL.

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 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.

The Organization maintains the Carrier improperly used employees junior to the Claimant to work overtime on April 22 and 23, 1989. The Organization further contends the Claimant was available and would have accepted the opportunity to work if offered by the Carrier. The Organization asserts that no factual dispute exists and acknowledges the Claimant was on vacation April 20 and 21. According to the Organization, the dispute comes down to availability. Noting that the Claimant had taken two vacation days to be with his sick son, the Organization insists that request has no relevance to the fact the Carrier made no effort to call the Claimant. Citing Third Division Award 11464, the Organization argues that precedent supports a finding that an employee entitled to overtime service is considered unavailable only after a reasonable effort has been made to contact him.

The Carrier takes the position that because the Claimant was on emergency vacation on April 20 and 21, 1989, he was not available to perform service on the weekend of April 22 and 23. The Carrier contends the Claimant, being on vacation immediately prior to the weekend, was not eligible for a call until he reported back to work on Monday, April 24, following his rest days.

Review of the numerous Awards cited by the parties affirms that the defense of unavailability is recognized only after a Carrier has shown it made a reasonable effort to determine whether or not the employee was, in fact, available. We stress, however, that Third Division Awards 11464, 17798, and 19383 did not involve analogous fact situations. Herein, the Board finds Third Division Award 23198 as adopted by Third Division Award 27616 on point with the fact situation of this dispute. Essentially, Award 23198 held that when an employee goes on vacation, the employee is not entitled to return to service from vacation until the first work day the employee is scheduled to return to work. This Board adopts the reasoning of Award 23198 and finds : Claimant was not entitled to a call on April 22 and 23, 1989.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deaver - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1992.