

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30399  
Docket No. MW-30141  
94-3-91-3-577

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Terminal Railroad Association of St. Louis

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

- (1) The Agreement was violated when, on September 8, 1990, the Carrier assigned junior Machine Operator Wayne Bailey instead of senior Machine Operator Jerry West to work overtime on the derailment at Eads Main at St. Clair Avenue in East St. Louis, Illinois (System File 1990-20/013-293-19).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant Jerry West shall be allowed thirteen (13) hours' pay at his time and one-half rate of pay."

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 employee 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 is a time claim filed by the Organization on behalf of a Large Machine Operator in the employ of the Carrier. The claim arose after the Carrier called a junior Large Machine Operator to work overtime on September 8, 1990, after a derailment near Eads Main at St. Clair Avenue in East St. Louis, Illinois.

The Carrier contends that the Track Supervisor called all Large Machine Operators in seniority order following the derailment, and that the Claimant was called twice, with the phone ringing six times with no answer. In accordance with its established procedures, the Carrier then called the next senior available operator.

By letter of April 4, 1991, the Carrier confirmed a conference of March 26, 1991, during which it denied the claim. On October 2, 1991, the Organization submitted a note by the Claimant dated September 20, 1991, stating that he was at home on September 8, 1990, but did not receive a phone call from the Carrier. The claim was then progressed to the Board on October 17, 1991.

After a careful review, we conclude that the record contains substantial evidence that the Carrier did attempt to reach the Claimant by telephone without success. While the Claimant's note of September 20, 1991, is technically part of the on-property handling, the lateness and self-serving nature of this submission casts significant doubts on its credibility. We therefore conclude that the Organization failed to carry its required burden of proof in this matter and that the Claim must be denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.