

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30978  
Docket No. MW-30649  
95-3-92-3-440

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (CSX Transportation, Inc. (former  
( Louisville and Nashville Railroad Company)  
(  
(Brotherhood of Maintenance of Way Employees)

STATEMENT OF CLAIM:

"C. Miracle, ID #187435 is entitled to 5 hours pay at Track Repairman time and one-half rate for October 17, 1991, account junior employees F. L. Martin, ID #188082 and G. L. Bullock, ID #188038 were allegedly called for overtime work in lieu of the Claimant."

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.

Claimant established and holds seniority as a Track Repairman on the Corbin Division, Cincinnati Seniority District, and was assigned as such when this dispute arose. There is no dispute that Claimant fulfilled the requirements of Rule 30(b) and had been called for overtime in the past.

On Saturday, February 9, 1991, a derailment occurred on the Cincinnati Seniority District, near Richmond, Kentucky. According to Carrier it was "unable to contact sufficient employees from the Richmond Force." On that basis, two junior Trackmen were called to report for overtime service. The junior employees worked five hours' overtime repairing track at the derailment.

The Organization submitted a claim maintaining that Carrier had violated Rule 30(b) of the Agreement when it "called two junior employees in lieu of Claimant who is a qualified track subdepartment employee, and holds seniority as such on the Cincinnati Seniority District where the violation took place."

Carrier denied the claim asserting that:

"An attempt was made to contact each employee of the Richmond Section Gang by Roadmaster Grady and he could not find enough help to repair the emergency condition. He consequently called other employees who lived close to the emergency condition.

C. Miracle was not a member of the Richmond Section Gang, he did not live close to the emergency condition, trains were being delayed, Rule 30(b) was not violated and your claim is denied in its entirety."

Carrier further asserted that:

"The true facts of the matter is (sic) that Claimant lives in London, KY (51 miles from the emergency site), junior employee Bullock lives at Brodhead, KY (28 miles from the emergency site) and junior employee Martin lives at Mt. Vernon (28 miles from the emergency site)."

As a threshold issue, Carrier did not dispute the Organization's assertion that Claimant had complied with Rule 30(b) of the Agreement, and that he had, in fact, been called for overtime on prior occasions. Based upon that assumption, we must address the merits of this dispute: (1) Did Carrier fail to make any attempt to call and assign Claimant; and, (2) Is relative proximity of Claimant determinative in assigning overtime?

With respect to the first question, Carrier concedes that it did not even attempt to call Claimant. It cannot be disputed that Claimant was entitled to be called to cover the subject vacancy and Carrier committed a prima facie violation of the Agreement when it failed to do so. Relative proximity has on occasion been found to be a mitigating factor which justified bypassing a senior employee for emergency callouts, but we are not persuaded on this record that Carrier made out that affirmative defense. In this case, the 20 minute travel time difference between Claimant's residence, and those of the junior employees did not justify violating his seniority rights. Claimant was in compliance with the appropriate Agreement Rule and his seniority entitled him to the work opportunity. Based on the foregoing, this claim must be sustained.

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AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.