

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33895
Docket No. MW-32699
00-3-95-3-633**

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

**(Brotherhood of Maintenance of Way
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employee F. E. Lyons to a ‘13 (A) Machine paying job’ on SPG Gang 5XT3 on December 12, 13, 14, 15, 16, 17, 19, 20, 21 and 22, 1994, instead of calling Mr. L.W. Green, who was senior and available [System File 21 (7)(95)/12(95-93) CSX].**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. L.W. Green shall be allowed compensation at the SPG 13(A) Machine Operator's rate for:**

‘... 10 hours straight time for each date of December 12, 13, 14, 15, 19, 20, 21 and 22, 1994 and 1 hour overtime for December 12, 11 hours overtime for December 16 and 10 hours overtime for December 17, 1994. Mr. Green should also receive all expenses and travel time equal to that of Mr. Lyons.’”

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 were given due notice of hearing thereon.

L. W. Green (Claimant) established seniority as a Machine Operator. Pertinent to this dispute, F. E. Lyons is also a Machine Operator, but junior to the Claimant.

Prior to the dates giving rise to this dispute, the Claimant and Lyons were regularly assigned to SPG Gang 5XT3 under the supervision of Gang Supervisor C. Fitchett, working ten hours per day, Monday through Thursday, with Friday, Saturday and Sunday as assigned rest days. On December 1, 1994, the members of SPG Gang 5XT3, including Machine Operators Green and Lyons, received notification that their positions would be abolished effective December 8, 1994. Notwithstanding, the Carrier determined that it would temporarily need to extend the work of SPG Gang 5XT3 to complete a concrete tie installation project near Jackson, Kentucky, on the EK Subdivision, for which one Machine Operator was required. Ultimately, junior Machine Operator Lyons accepted the call on the morning of December 12, 1994 and was assigned to do that work on December 12, 13, 14, 15, 16, 17, 19, 20, 21 and 22, 1994.

On February 8, 1995, the Organization submitted a claim on behalf of Machine Operator Green asserting that the Carrier had violated Sections 2(d), 4(a), 7 and 13 of the SPG Agreement when it assigned junior employee Lyons rather than the more senior Claimant to perform Machine Operator's work on the dates at issue. In its March 31, 1995 denial, the Carrier maintained that it had attempted without success to call the Claimant for the work on the morning of December 12 and called the junior employee only because the Claimant could not be reached. In that connection, Timekeeper L. Lyons filed a written statement dated February 25, 1995 that he had tried to contact the Claimant, but got no response and therefore called Machine Operator Lyons. In rejoinder, on December 6, 1995 the Organization produced a written but undated statement from the Claimant asserting that he had been at home on December 12, 1994 and that no one called or left any message on his answering machine on that date.

The Board is confronted on this record with an irreconcilable conflict in material fact, set forth in diametrically opposed written statements from the two primary witnesses. In such situations of evidentiary gridlock, it is well settled that the Board must dismiss the claim on grounds that the moving party has failed to establish a prima facie case. See Third Division Awards 21423, 16780, 16450, 13330; Second Division Awards 7052, 6856; Public Law Board No. 4759, Award 3.

AWARD

Claim dismissed.

ORDER

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 24th day of January, 2000.