

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39320
Docket No. MW-37805
08-3-NRAB-00003-030164
(03-3-164)

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company (former Chicago &
(North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call and assign furloughed employee A. T. Koren to extra work on a temporary district gang laying rail on a bridge near Cedar Rapids, Iowa on December 3, 4, 5, 6 and 7, 2001 and instead called and assigned junior furloughed employees B. P. Koski and K. L. Kroupa. (System File 4RM-9318T/1309862 CNW)
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. T. Koren shall now be compensated for forty (40) hours of straight time pay and for two (2) hours of overtime pay at the applicable trackman’s 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 were given due notice of hearing thereon.

The dispute at issue calls for a determination as to whether the Claimant was denied benefit of a work opportunity when the Carrier found need to recall employees from furlough to perform extra work on a temporary district gang to lay rail on a newly constructed bridge near Cedar Rapids, Iowa, it being the contention of the Claimant that he was not called for such work and that the Carrier called and used employees junior in seniority to him for the work.

It is the position of the Carrier that the Claimant was called and failed to answer the phone or return a message. In support of its contentions, the Carrier presented into the record during the handling of the claim on the property a February 13, 2002 electronic mail statement from D. Wilson, Manager Special Projects Field Construction. This statement reads:

“Employee was called he did not answer or return message. All employee’s (sic) were called in order for the position needed for the tempory (sic) work that was being performed by their seniority. List with phone numbers and seniority ranking was provide (sic) by gms clerk leroy moffit.”

In response to the above-referenced statement, the Claimant submitted a signed letter in which he challenged his having been called for the work at issue. The Claimant’s letter, dated April 7, 2002, reads as follows:

“This letter is in regards to claim 4RM-9318T filed on my behalf. I was working in my shop the week of December 3 – 7, 2001. I have a working phone in my house with an extension in my shop. I also have an answering machine in my house.

I never received a call from the Railroad asking me to work temporary at Cedar Rapids. There wasn’t any message on my answering machine either. I would have heard the phone or had a message on my answering machine if the Railroad would have called.

I was available and willing to work for the Railroad at that time.”

While the Carrier asserts it complied with a request from the Organization for a list of the phone numbers and seniority ranking said by Wilson to have been provided him by the General Manager’s Clerk for calling furloughed employees, the Organization maintains that when it asked for such documentation the Carrier could not produce it. The Organization also contends that its request of the Carrier for phone bills or records showing the date and time the Claimant was alleged to have been contacted likewise went unfulfilled.

Although the Carrier is shown to have taken exception to the above assertions of the Organization, the Board finds it significant that the Carrier did not present any documentary evidence to support it having provided any of the requested information to the Organization.

Except for the above-referenced unsigned electronic statement from Wilson, the Carrier provided no verification to prove that the Claimant was indeed called for the work opportunity.

Notwithstanding its failure to have produced any documentary evidence in support of its defense that a phone listing as used to call the furloughed employees did exist, the Carrier takes the further position that if the contact information provided by the General Manager’s Clerk to Wilson was incorrect or did not reflect an up-to-date telephone number for the Claimant, that it was the latter’s responsibility to update that information pursuant to Rule 14(A) of the Agreement. This Rule provides: “Employees shall provide the Carrier and General Chairman in writing of any change in mailing address and telephone number.”

The Board is not persuaded by this Carrier argument. As stated hereinabove, nothing of record shows the phone number that Wilson purportedly used to contact the Claimant. Nor does the record show that the Claimant had at the time, much less meantime, apprised the Carrier and General Chairman of a change in his telephone number. Moreover, even assuming, arguendo, as the Organization says, the Claimant’s personal information on the listing as provided by the General Manager’s Clerk was found to have been incorrect, it would conflict with the statement of Wilson

that he had called the Claimant and left a message on the Claimant's answering machine.

The Carrier having failed to provide competent support for its defense against the claim, the Board finds that the claim should be allowed.

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 29th day of September 2008.