

Award No. 16279  
Docket No. MW-17068

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Arnold Zack, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
INDIANA HARBOR BELT RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, on Saturday, January 22, 1966, it called and used a section foreman junior to Section Foreman Leo Guzik to perform overtime service from 7:00 A. M. to 4:00 P. M.

(2) Foreman Leo Guzik now be allowed nine (9) hours of pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Claimant Leo Guzik, with section foreman's seniority dating from December 21, 1955, and Mr. J. Orozco, with section foreman's seniority dating from December 6, 1963, are both regularly assigned section foremen with headquarters at LaGrange, with a work week extending from Monday through Friday (Saturdays and Sundays are rest days).

Sometime prior to 7:00 A. M. on Saturday, January 22, 1966, a derailment occurred at the east end of Norpaul receiving yard which resulted in damage to Tracks 7, 8 and 9. Instead of calling and using Claimant Guzik (the senior section foreman) to supervise the necessary repairs, the Carrier called junior Section Foreman J. Orozco, who thereafter performed overtime service from 7:00 A. M. to 4:00 P. M.

The claimant was available, willing and fully qualified to have performed this overtime service if he had been called and given the opportunity to do so.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute "effective at 12:01 A. M. on August 1, 1947, modified or revised effective on various dates including September 1, 1949 and March 1, 1953, together with all mutually

A copy of this letter is being furnished to Mr. Barhydt which will serve as our written notice to him that his aforementioned decision is rejected."

Engineer Maintenance of Way set up conference with General Chairman in his letter of June 17, 1966 as follows:

"Refer to yours of June 10th concerning alleged claim presented in favor of Foreman Leo Guzik, because he was not called for overtime service on January 2, 1966. [sic.]

I am agreeable to confer with you at 10:00 A. M. on June 29th, 1966 in Mr. Van Dyke's Office, Room 407, Gibson General Office Building, 2721 - 161st Street, Hammond, Indiana.

Please advise if date and place of conference is agreeable."

Engineer Maintenance of Way subsequent to conference with General Chairman on June 29, 1966 denied claim to the General Chairman in his letter of July 8, 1966 as follows:

"With reference to our meeting of June 29th at Gibson, Indiana, relative to claim which you prepared in behalf of Foreman Leo Guzik allegedly not being called for overtime service on January 2, 1966. [sic.]

As we discussed, Superintendent McCanna of the IHB, having questioned Yardmaster Wynkoop, advises that Mr. Wynkoop very definitely did call Mr. Leo Guzik on the morning of January 2nd, [sic] and after allowing the phone to ring for a reasonable period, redialed the next senior foreman, who did answer the phone and was called to assist in clearing up the yard derailment.

As you were advised, instructions are posted in offices responsible for calling employees in the event of derailments, with the listing being made in order of seniority and instructions to call personnel in this order. In checking back the last six months, I can find no other instance where this has been violated. I believe you concurred in this fact and have no reason to believe that any other was the case in the alleged non-call out of Mr. Guzik, as is substantiated by the Superintendent's testimony in this instance.

On the basis of the above, your claim is hereby denied."

(Exhibits not reproduced.)

**OPINION OF BOARD:** Sometime prior to 7:00 A. M. on Saturday, January 22, 1966, due to a derailment in Norpaul, Carrier had need of a section foreman. According to its testimony it telephoned Claimant Leo Guzik and failing to get an answer, assigned a junior Section Foreman, J. Orozco, who performed overtime service from 7:00 A. M. to 4:00 P. M.

The Employees filed the instant claim contending that Guzik was at home at the time the call was allegedly made, that the phone was heard neither by him or by the members of his household. It asserts that the Carrier failed to comply with the terms of the parties' agreement by offering Guzik the senior employe the available work, on the date in question.

The Carrier acknowledges that Guzik was the senior employe and thus entitled to the work in dispute. It asserts that it followed its usual practice of telephoning the senior employe, Guzik as its records so indicate; and that the telephone call was unanswered. Accordingly it was compelled to call Section Foreman Orozco.

There is no question over the fact that Guzik was senior to Orozco and thus had a prior right to the work in dispute. The Carrier's practice in informing senior employes of available work has been to telephone them. The evidence is in direct contradiction as to whether or not a telephone call was made, although it is clear that none was received. We are convinced from the record that Claimant and other members of his household were at home at the time of the call. Carrier had the responsibility of informing the Claimant of the work, although it too is subject to the vagaries of human limitations and our electronic society. A call could have gone wrong for a multitude of reasons including, a bad connection, a misdialed number, failing to reach an outside line if called through a switchboard, not awaiting a dial tone, repairs on the line or the use of a faulty piece of equipment. We do not go so far as to hold that Carrier is required to verify receipt of every message in every instance, either by telegram, or actual visit to the employe's home, or even by repeated telephone calls. But Carrier is required to make a reasonable rather than a minimal effort to locate senior employes.

We find, that in this particular case there is no evidence in the record to support the contention that Claimant Guzik was not available at the time, or that a reasonable effort was made to locate him and inform him of the available work.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated by the Carrier.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1968.

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