

Award No. 16473
Docket No. MW-16998

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORFOLK AND WESTERN RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it used R. W. Starkey to perform overtime service at Roanoke Terminal on March 6, 1966 instead of using John B. Keeling for such service. (System Case M-1738.)

(2) Mr. John B. Keeling be paid for an equal amount of hours at time and one-half rate of pay as made by junior employe Starkey on March 6, 1966.

EMPLOYEES' STATEMENT OF FACTS: The claimant was a regularly assigned section laborer in the gang designated as Section Force No. 2, with headquarters at Roanoke Terminal, Roanoke, Virginia. He was regularly assigned to work Monday through Friday of each week. Saturdays and Sundays were designated rest days.

On Sunday, March 6, 1966, Section Foreman Chaffin Carter called Section Laborer R. W. Starkey to perform overtime work. Section Laborer Starkey was a regularly assigned member of Section Force No. 2. However, he held less seniority in that class than the claimant.

The claimant was at home throughout the day on March 6, 1966. He was not called.

Claim was timely and properly presented and handled by the Employes 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 dated December 16, 1963, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: The claim in this case is based upon the provisions of an Agreement between this Carrier and the Brotherhood of Maintenance of Way Employes bearing effective date of December 16, 1963.

Copies of that Agreement are on file with your Board and are, by reference, made a part hereof.

Roanoke, Virginia, and its metropolitan area has a population of about 150,000, and it is the site of a terminal for Carrier's Norfolk Division to the East, Shenandoah Division to the North and South, and Radford Division to the West. Extensive yard facilities are maintained around the clock at this point, under the jurisdiction of a terminal Superintendent. Roanoke Terminal is a separate seniority district for maintenance of way section force employees.

At the time of occurrence involved in this case, Chaffin Carter held regular assignment as Foreman of Roanoke Terminal Section Force No. 2 and John B. Keeling (Claimant in this case) held regular assignment as Section Laborer on that force. The members of this force were assigned to work from 7:30 A. M. to 4:00 P. M. daily (with a half-hour meal period) Monday through Friday, with rest days on Saturday and Sunday.

On Friday, March 4, 1966, certain members of Section Force No. 2 were instructed to report at 7:00 A. M. on Sunday, March 6, 1966, to perform work of cleaning debris from the interiors of freight box cars. However, account of a derailment, some of these employees had to be called and used prior to 7:00 A. M. on March 6. Therefore, upon reporting for duty at 7:00 A. M. on March 6, Foreman Carter was instructed to call three additional section laborers to report for work at 8:00 A. M. on that date to help with the work of cleaning box cars. Foreman Carter called additional employees as instructed. By the use of the telephone, Foreman Carter called Laborers at the telephone numbers which they had previously placed on record with the foreman for the purpose of being called for overtime and/or emergency work.

Foreman Carter called men on March 6, 1966, in the order of their seniority standing, first calling the senior Laborer assigned to the force, then the next senior Laborer assigned to the force, etc. By the time Claimant John B. Keeling's name was reached on the seniority list, only one more man was needed to complete the consist of the force. Mr. Keeling was called in his turn, but his telephone was not answered. Foreman Carter then continued calling Laborers assigned to the force until he was able to contact R. W. Starkey. Mr. Starkey reported for duty at 8:00 A. M. and worked ten hours on March 6, 1966. Since this was work performed on a rest day in excess of forty hours or five days in his work week, Laborer Starkey was compensated therefor by allowance of ten hours at Laborers' time and one-half rate of pay.

Employees filed the following claim:

"We are in receipt of information from John B. Keeling wherein it is stated that a junior employee, R. W. Starkey, was called for overtime service on Sunday, March 6, 1966, and he (Keeling) was not called.

In view of the above it now becomes necessary that we request that John B. Keeling be paid for an equal amount of hours at time and one-half rate of pay as made by junior employee Starkey."

Carrier declined the claim.

OPINION OF BOARD: This is a claim wherein an employee junior to the Claimant was used to perform overtime service. Petitioner has alleged a violation of Rule 45(d) of the Agreement. This rule simply states that in situations such as the one confronting us here, the senior man will be called.

The evidence of record indicates that the Foreman did telephone Claimant for the work involved, but having received no answer, then called the next man on the list. Claimant has submitted his own statement and his wife's statement to the effect that he was home when the call allegedly was made, but did not hear the telephone ring. Hence, we have conflicting statements from the Foreman and Claimant. The Foreman has stated that he called only once. We do not think that this constitutes a reasonable effort on his part to satisfy the requirements of the cited rule. Nor are we convinced by Carrier's argument that Petitioner submitted the claim on the property based on the proposition that Claimant was not called, whereas the claim now before us is that he was not used. This is not a substantial variance. We will therefore sustain the claim.

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 Employees involved in this dispute are respectively Carrier and Employees 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1968.