Award No. 17116
Docket No. MW-17848

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(1) The Agreement was violated when a section laborer junior to Mr. V. H. Nichols was used for overtime service on July 9, 1967. (System file: 4-P-241/1-126-1022.)

(2) Section Laborer V. H. Nichols now be allowed six (6) hours' pay as his time and one-half rate because of the violation referred to in Part (1) of this claim."

EMPLOYES' STATEMENT OF FACTS: The claimant is a regularly assigned section man on Maintenance Gang 6, with an assigned work week extending from Monday through Friday (Saturdays and Sundays are rest days).

At about 10:00 P.M. on Saturday, July 8, 1967, the Carrier called Mr. J. E. Mallon (claimant's foreman) and instructed him to have three (3) sectionmen report at 7:00 A.M. on Sunday, July 9, 1967, to help with a drag line working at Mile Post 8, pole 28. The foreman called the claimant's home and, upon receiving no answer, proceeded to call and instruct junior employes to report for the aforedescribed work at 7:00 A.M. the following day. The junior employes performed overtime service from 7:00 A.M. to 1:00 P.M.

The Employes contend that the claimant, who returned home at 11:00 P.M. on Saturday, was available for this overtime work and that, if he had been called on Sunday, he would have responded immediately. The Employes also contend that the Carrier's telephone call to the claimant's home on Saturday evening did not constitute a diligent and reasonable effort to reach him nor did it determine that he would not be available for said overtime work.

The claimant was entitled to the overtime work in accordance with the provisions of Section (a) of Rule 2 which reads:

OPINION OF BOARD: This dispute involves the question as to whether or not Carrier, in calling junior employes, violated the Agreement when it failed to call Claimant for overtime work on July 9, 1967.

The Organization's position is that Rule 2(a) of the Agreement was violated in this instance; that Claimant was available for said overtime work, but that Carrier did not make a reasonable or diligent effort to contact the Claimant; that Claimant shall have been called by Carrier on the day of this overtime work.

Carrier contends that the Agreement does not provide for the manner, substance or form in which employes shall be called for said overtime work; that inasmuch as Carrier's Section Foreman attempted to twice call Claimant by phone, Claimant was thus unavailable and his claim therefore should be denied.

In its ex parte submission to this Board, Carrier states; "It is undisputed in this case that Claimant by virtue of his seniority had the right to be called for overtime service on Sunday, July 9, 1967." Further, in its said ex parte submission, Carrier asserts that in accordance with the long established usual procedure, Claimant's Section Foreman called, by telephone, in seniority order, the number of men he needed for such overtime service.

Thus, it is seen that Carrier admits that Claimant, by virtue of his seniority, had the right to be called for said overtime work. Further, Carrier admits that by past practice, it calls, by telephone, for overtime work, employes according to their seniority.

Therefore, the question resolves itself down to whether or not Carrier made a reasonable effort to call Claimant in this instance for said overtime work.

Carrier alleges that it exerted every effort to contact Claimant late in the evening of July 8, 1967, after the Section Foreman was notified at 10:45 P.M. to have three section men report to the job site at 7:00 A.M. on July 9, 1967. Claimant denies that he was called after 11:00 P.M., stating that he arrived home at that time, and that he could have been called after 11:00 P.M. on July 8, 1966, or in the morning on the following day that the work was to be performed.

It is undisputed that an emergency did not exist in this instance. Carrier asserts that inasmuch as Claimant was 50 miles away from where Claimant's Section Foreman called him, and since it was getting late, Carrier couldn't wait any longer to contact Claimant.

The record is void of any evidence as to where the job site was located. Further, there is no evidence that Carrier attempted to call Claimant after 11:00 P.M. on July 8, 1967. In view of the fact that an emergency did not exist, we feel it was obligatory for Carrier to have exerted further effort to attempt to contact Claimant by more phone calls after 11:00 P.M. or in the morning of the day of the overtime work. Carrier did not dispute Claimant's statement that he was at home after 11:00 P.M. and Carrier does not claim to have called him after that time. Therefore, we feel that this claim should be sustained.

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.

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 1969.

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