

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19383
Docket Number CL-19260

Gene T. Ritter, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Western Maryland Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6970) that:

(1) Carrier violated the Rules Agreement when it failed to call the Claimant to fill vacancy at Cumberland, Maryland on Sunday, June 28, 1970 and,

(2) R. D. Van Fleet shall now be allowed eight (8) hours pay at the time and one-half rate for the above violation.

OPINION OF BOARD: There appears to be no dispute as to the facts involved in this case. Yard Clerk Twigg with assigned hours of 8:00 A.M. to 4:00 P.M. reported to Carrier that he would be unable to work his assignment the following day, June 28, 1970. This report was made at approximately 9:00 P.M. on the preceding day, June 27, 1970. The call clerk, in accordance with Rule 39 of the Agreement, commenced calling Claimant at 9:00 P.M. June 27, 1970. Calls were made to Claimant at 9:00 P.M., 9:30 P.M., 10:00 P.M., 10:30 P.M., and 11:45 P.M. on June 27. The call clerk received no response from these calls from Claimant and proceeded to make arrangements for the Clerk working on the preceding trick to double through on the 8:00 A.M. job. Claimant returned home at 12:30 A.M., June 28, but was not called after his return.

The Organization contends that Carrier failed to make a reasonable effort to contact Claimant as required by Rule 39. Carrier has taken the position that the calling clerk made all effort required of him under the rules to contact Claimant.

All prior Awards cited by each of the parties to this dispute require Carrier to make a reasonable effort to contact the employee entitled to perform the involved work. In the event of an emergency, less effort is required than when no emergency exists. In this dispute, there was no emergency involved; the filling of a vacancy for routine activity.

The denial awards cited by Carrier shed little light on the question in issue. Award 10376 (McDermott) revealed that Carrier had called nine (9) employees who refused the call, were not at home, or did not answer. The 10th employee called accepted. There was also an unproven issue as to whether Claimant

was called in this Award. Award 11994 (Seff) involved a Claimant who had no telephone in his home and relied upon a relay system to obtain a message; and that not having received the call, the involved work was postponed until the next day and care of during regular working hours. Award 11743 (Englestein) involved a mechanical breakdown of telephone service through no fault of Carrier. Award 9747 (McMahon) involved an existing emergency caused by a derailment requiring swift response to the call.

On the other hand, the Organization has cited Awards directly in point which are not in palpable error and, therefore, under the doctrine of stare decisis must be followed. Award 17116 (Dugan) sustained a claim where Claimant was called, but was not at home at 10:45 P.M. to report for a job at 7:00 A.M. the following day. Claimant arrived home at 11:00 P.M., but was not called. Awards 16473 (McGovern) is also in point and sustains the position of the Organization.

However, this Board feels that the better reasoned awards such as First Division Award 20050; Third Division Awards 9393 (Hornbeck), 9566 (Ros 13177 (Wolf), 13191 (Coburn) and many others preclude Claimant from receiving pay at the punitive rate for time not worked. This Award will be sustained at the straight time rate.

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 in accordance with the Opinion.

A W A R D

Claim sustained for 8 hours at the straight time rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.