

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19869
Docket Number CL-20022

Burl E. Hays, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employees
(
(The Central Railroad Company of New Jersey
(R. D. Timpany, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL7191) that:

(A) Carrier violated the Clerks' Agreement, particular reference to the Rule No. 3 (a) and Exhibit No. 6, on May 18, 1971, when they failed to call Mr. E. Thau to cover a temporary vacancy on the 11:00 P.M. - 7:00 A.M. Crew Dispatcher assignment, and

(b) Carrier shall be required to compensate Mr. E. Thau a day's pay at the punitive rate, for May 18, 1971.

OPINION OF BOARD: On May 17, 1971, the Brotherhood of Railroad Signalmen instituted a national strike against most of the nation's rail carriers. The Carrier in this case, Central Railroad Company of New Jersey, was struck by the Brotherhood.

Late in the day on May 18, 1971 the Signalmen's strike was officially terminated and Carrier began instituting normal operations. At about 11:30 P.M., Carrier began notifying those employees who were normally scheduled to work at 11:00 p.m., and who had not reported for work because they were observing Signalmen's picket lines, to return to service to complete their regular assignments.

Mr. C. Hoffman was regularly assigned to work the 11:00 p.m. Crew Dispatcher's position on May 18. At 11:30 p.m. a call was placed to his home and his wife answered. She advised that he was not at home but that he would return the call when he returned home. Approximately four hours later a second call was placed to Mr. Hoffman's home and his wife reported that he was still not at home.

Claimant E. Thau, who was regularly assigned to work the 7:00 a.m. to 3:00 p.m. Crew Dispatcher's assignment is seeking eight hours' payment at the rate of time and one-half on the grounds that he should have been called when the Carrier was unable to contact the regular incumbent, Mr. Hoffman.

Many Awards of this Division have established that the Carrier must demonstrate reasonable diligence in the matter of calling employees to work. (See Awards 14310, 16334, 17062, 17116, 17533 and 19383.). In this case we

hold that Carrier did exercise reasonable diligence in attempting to call the regular occupant, Mr. C. Hoffman, for work on his own position.

Claimant Thau was on his second scheduled rest day, May 17th, and voluntarily absented himself from duty on May 18th, the first day of his normal workweek, by failing to appear for duty or report off. There is no dispute as to Mr. Thau's fitness, ability or seniority for this assignment, but the controlling factor is availability, and there is no showing in this record that Claimant Thau was available to work Hoffman's position at 11:00 p.m. the time Hoffman's position was scheduled to start. Therefore, the claim must be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July 1973.