

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20109
Docket Number MW-20101

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Port Terminal Railroad Association

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

(1) The Carrier violated the Agreement when it called and used Extra Gang Foreman Walker instead of Relief Foreman Edwards for overtime service on December 25, 1971 (System File Time Claim MW-72-3).

(2) Relief Foreman Edwards be allowed four and one-half (4-1/2) hours' pay at the section foreman's rate because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: For the period extending from December 6 through December 31, 1971, Claimant L. B. Edwards was assigned as Relief Section Foreman to fill the position of a vacationing employee. This position was assigned to work Monday through Friday with Saturday and Sunday designated as rest days. On Saturday, December 25, 1971, Carrier called and used another employee, Extra Gang Foreman Walker, to perform overtime services on the section territory under the Claimant's job jurisdiction.

Claimant alleges that he was available to work and that his telephone number was on file at the roadmaster's office, at the assistant superintendent's office and at the office of the general yard master. In these circumstances, Petitioner urges that failure to call and use Claimant on the day in question was violative of the Agreement, Rules 14, 15 and 16, hereinafter reproduced in pertinent part:

"RULE 14:

(L). WORK ON UNASSIGNED DAYS. Where work is required by the Association to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.

RULE 15:

(I). Employees notified or called to perform work before or after but not continuous with the regular work period will be allowed a minimum of two hours and forty minutes at time and one-half rate for two hours and forty minutes work or less.

"If held on duty in excess of two hours and forty minutes (2'40"), time and one half will be allowed on the minute basis.

RULE 16:

(A). Except as otherwise provided in this rule, employees who are required to work on their assigned rest days and the following holidays -- namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by Proclamation shall be considered the holiday) shall be compensated therefor at the rate of time and one-half with a minimum of two hours and forty minutes (2'40"), as per paragraph I of Rule 15."

Carrier defends its denial of the claim on the ground that Claimant failed to provide Carrier with a correct telephone number. The record before us, however, reveals substantial confusion among Carrier personnel responsible for calling Claimant regarding the telephone number they called on the day in question, i.e., whether the calls were made to his old number or to his current number. In this connection, Claimant's contention that he had several times prior to December 25, 1971 been called to his assignment by Carrier at his current correct number stands unrefuted.

On the facts before us we are not convinced that the requisite reasonable effort was made by Carrier to contact Claimant before calling and using another employee in his position. Accordingly, the claim must 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 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.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By order of Third Division

ATTEST: AW. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1974.