

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21707
Docket Number MW-21778

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Milwaukee-Kansas City Southern Joint Agency

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

(1) The Agreement was violated when, on July 5, 1975, an
employee junior to Gerald E. Bayless was used for overtime service from
7:00 A.M. to 3:00 P.M. (System File 013.31-171).

(2) Claimant Gerald E. Bayless shall now be allowed eight
hours of pay at his time and one-half rate because of the aforesaid
violation.

OPINION OF BOARD: This is a dispute involving Carrier's alleged
failure to call Claimant for overtime work on his
rest day, calling a junior employee instead. The dispute turns on the
question of whether or not Carrier's effort to notify Claimant to report
for the work was adequate. There was no contention that an emergency
situation was involved. 1

The foreman stated that he attempted to call Claimant for the
work, but could not reach him. There is no indication of when he called
or how many times he attempted to call. On the other hand, Claimant de- 2
nies receiving any calls and claims he was at home for the entire period
in question. He also presented a statement from another person who was
with him that day who verified that he did not receive any calls.

Carrier takes the position that its efforts were adequate.
Carrier relies in part on Award 20408, which dismissed a similar claim on 3
the basis of a conflict in the evidence which precluded a resolution. It
is noted, however, that in that dispute there was evidence that Claimant
had been called several times by Carrier and no response had been received.

Carrier's efforts to reach Claimant in this instance were simply
inadequate, according to the record. We have been faced with similar cir- 4
cumstances on many occasions and have held consistently that in the absence
of emergency conditions, one attempted telephone call is insufficient (see
for example Awards 4189, 17533, 20109, 21222, and many others).

5 Carrier raises, inter alia, the question of the overtime rate claimed in this dispute. It must be clear that the overtime rate does not constitute a penalty since it was the regular rate of pay for the work on the rest day; the loss of work opportunity on that day mandates consistent reparations for the loss. 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 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.

A W A R D

Claim sustained.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulke
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1977.