

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22966  
Docket Number TD-22926

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(  
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as "the Carrier") violated the effective Agreement between the parties, Article IV(h)(1) thereof in particular, when on February 10, 1978, it failed to call extra train dispatcher G. D. Smallwood, the Claimant herein, for extra train dispatcher service on the first shift East End trick train dispatcher's position in Atlanta, Georgia.

(b) The Carrier shall now compensate Claimant G. D. Smallwood one day's pay at the trick train dispatcher's straight time rate of pay.

OPINION OF BOARD: On February 9, 1978, at 8:25 P.M., Carrier was advised that first shift train dispatcher, J. W. Branton, had marked off his position for February 10, 1978. Branton was scheduled to begin work at 7:00 A.M. on February 10th.

At 8:30 P.M. Assistant Chief Dispatcher C. B. Tibbetts contacted crew caller Bowden at Manchester and requested him to call extra train dispatcher G. D. Smallwood to notify him of the vacancy. Claimant, G. D. Smallwood, lives in Woodland, Georgia, and this procedure was followed in order to avoid a toll call from Atlanta to Woodland.

Claimant's son answered the phone and advised that his father was expected to return at midnight. The Assistant Chief Dispatcher then attempted to contact the next extra train dispatcher, J. R. Scott. The attempt to contact Scott was unsuccessful. At 8:41 P.M. Tibbetts called regularly assigned train dispatcher, A. J. Langley, who was observing his rest days, to protect the assignment.

The Organization contends that Carrier violated the Agreement by not calling Claimant for the position. It argues that Carrier knew that Claimant would be returning at 12:00 A.M. and that Carrier should have attempted to call Claimant at 12:00 A.M. to protect the position.

Carrier argues that it acted properly. While Carrier raises other possible defenses, the crux of Carrier's contention is that Claimant should have returned the call when he arrived home. Had he done so, Carrier asserts, the call to Langley could have been cancelled.

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An analysis of the record on the property convinces us that the claim must be sustained. Carrier called Claimant at 8:30 P.M. At that time, Carrier was informed that Claimant would return at midnight. Midnight would have been a full seven hours before the vacancy on the assignment. Clearly, Claimant would have had ample opportunity to report in a timely fashion.

Carrier's contention that Claimant should have returned the call must be rejected. The evidence on the property simply does not support Carrier's argument that Bowden identified himself to Claimant's son. In fact, it was not until four months after the incident that the argument that Bowden had identified himself to the son was first raised. The record does not indicate that the son had any way of knowing that the call was from the Railroad. Carrier's assertion that Bowden's voice was familiar to the son is also insufficient to establish that Claimant should have known that the Railroad was expecting a call from him.

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In sum, we are convinced that Carrier should have attempted to reach Claimant for a second time at midnight. It did not. Therefore, we must conclude that a reasonable effort was not made to secure the senior, qualified, unassigned employee. See Awards 16279 and 20119. We will sustain the claim.

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: *A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1980.