NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23404
Docket Number MW-23291

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Western Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it failed to use Section Foreman Antonio Atencio to perform overtime service at Camp Rogers on October 29, 1978 (System File B- Case No. 11539-1979-BMWE Local Case No. 268 MofW).

(2) Section Foreman Antonio Atencio be allowed nineteen (19) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Organization claims that Carrier violated the Agreement when it failed to use Claimant, Section Foreman Antonio Atencio, to perform overtime service at Camp Rogers on October 29, 1978. The Organization seeks nineteen (19) hours pay at the time and one-half rate because of the alleged violation.

The evidence presented establishes that Carrier contacted Claimant and told him to get a crew and depart Little Valley at 2:00 A.M. on October 29, 1978 so as to arrive at Camp Rogers by 6:30 A.M. to fix a derailment. Mr. Malette, the driver of Carrier's vehicle, arrived at Claimant's home at about 11:00 P.M. and found the house to be totally dark. The driver, therefore, left to pick up the rest of the crew. As a result of missing this ride to Camp Rogers, Claimant performed no service for the Carrier on October 29, 1978. Since Claimant's regular workweek is Monday through Friday, work on Sunday, October 29th would have been compensated at the overtime rate.

The responsibility for Claimant's failure to work on October 29, 1978 must be shared by both the Carrier and the Claimant. The Carrier failed to clearly communicate to the Claimant that the Company truck assigned to Claimant, and being used by Malette to transport a crew to Dunsmuir, would pick him up before 2:00 A.M. The Carrier must also bear the responsibility for Malette's failure to attempt to contact Claimant for the early trip to Camp Rogers.

The Claimant, however, must bear the responsibility for failing to take any steps to contact the Employer or to arrange alternate transportation to the derailment site once it was apparent that he had missed his ride.

Rule 39 of the Agreement (amended effective March 1, 1974) provides:

> "Employes sent away from their home station, headquarters point, or moved from one work location to another, shall be furnished with free transportation by the Company in traveling from his home station or headquarters point to another point and return or from one work point to another."
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> "If such transportation is not furnished, the employe will be reimbursed for the cost of public transportation used or if he has an automobile he is willing to use and the Company authorizes him to use said automobile, he will be paid an allowance of 9¢ for each mile traveled from his home station or headquarters points to the work point and return or from one work point to another."

Once it became clear to the Claimant that Carrier transportation would not be taking him to Camp Rogers, Claimant should have sought public transportation or other means to reach the job site. Rule 39 indicates that the employe would be compensated if such alternate methods of transportation were used.

The Claimant offered no evidence of any attempt to arrange alternate transportation, nor did he indicate any reasons for failing to find other means of transportation. For this reason, the Claimant should not be permitted to collect pay for the full nineteen (19) hours of work missed.

In view of the fact that the Carrier's employe, Malette, made no significant effort to contact Claimant, and since Claimant reasonably did not expect to be picked up before 2:00 A.M., we find that Claimant was available for work. The appropriate remedy is that Claimant be compensated at the rate of time and one-half for one (1) day's pay.

One final point: Carrier argued that day light savings time may have accounted for the lack of readiness of Claimant. This argument is unpersuasive for the change in time would, at best, account for only a one hour difference in time. Claimant cannot reasonably have been expected to be ready more than an hour before his scheduled pick-up time.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October 1981.