

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23462  
Docket Number MW-23042

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Chicago, Milwaukee, St. Paul and 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 recall furloughed Laborer R. D. Soper to service on January 26, 1978 (System File C#29/D-2173).

(2) Because of the aforesaid violation, Laborer R. D. Soper shall be allowed twenty-four (24) hours of pay at his straight-time rate and eighteen and one-half (18-1/2) hours of pay at his time and one-half rate for January 26, 27, 29 and 30, 1978."

OPINION OF BOARD: Claimant, R. D. Soper, established and holds seniority as a Laborer and at the time of this dispute, Claimant was furloughed. The Organization contends that Carrier violated Rule 11 of the Agreement when Carrier failed to recall and assign Claimant for service on January 26, 27, 29 and 30, 1978. Carrier, instead, assigned and used an employee with junior seniority.

Rule 11 states:

"When forces are increased, except as provided in Rule 8 (c), the senior, available, laid off employees in the respective classifications will be notified and they will return to service within seven (7) days after being notified at their last known address, unless prevented from doing so by reason of sickness or other unavoidable cause. Failure to return to service in accordance with the provisions of this rule will cause forfeiture of seniority rights." (Emphasis supplied)

Carrier argues that an attempt was made to contact Claimant on January 26, 1978, but contends that there was no answer. Since it could not reach Claimant on January 26, the junior employee was also used for January 27. Carrier further argues that blizzard conditions on January 29, constituted an emergency which required utilizing the nearest available employees to rerail a snowplow. Carrier admits that no attempt was made to contact Claimant on January 30.

After a careful review of all the evidence presented, we believe that an attempt to contact the Claimant on January 26, 1978 was made, but he was not available and therefore, could not receive the call. However, even a reasonable attempt on January 26, would not suffice regarding the work

required on January 27. Therefore, we must conclude that the Claimant was available to work on January 27.

As to January 29, we are persuaded that an emergency condition existed due to the derailed snow plow. For this reason, the nearest, available employee was called and utilized and we believe this was proper.

In regard to January 30, Carrier acknowledges that Claimant should have been called and under Rule 11, he is entitled to be compensated for this date.

In all, Claimant should be paid 8 hours straight time and 4 hours overtime for January 27 and 8 hours straight time for January 30, 1978. Compensation for January 26 and 29, 1978 is denied due to the reasons cited above.

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.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

*A. W. Paulson*

Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.