

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24975
Docket Number MW-25087

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The Carrier violated the Agreement when it failed to call Track Laborer C. Borel, Sr. for overtime service on December 5, 1981 and January 12 and 13, 1982 but called and used junior laborers therefor [System Files MW-82-48/341-42A and MW-82-49/341-43-A].

(2) Track Laborer C. Borel, Sr. shall be allowed twenty-three (23) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: Claimant asserts that Carrier violated the controlling Agreement, particularly Sections 1(b) and 1(c) of Article 2, when it failed to call him to perform overtime work on December 5, 1981 and January 12 and 13, 1982. He avers that Carrier called junior employees to perform this work notwithstanding that he was home on the aforesaid dates and available for this work. He argues that contrary to Carrier's assertion that the records of District Manager I. E. Hawks indicate that Mr. Hawks personally called him for this work, he was in fact at home and noted that several persons were with him on those dates. He contends that Carrier has not offered credible proof to verify these calls and further maintains that even assuming arguendo, Carrier made one attempt to call him on these dates, this minimal effort did not constitute a reasonable attempt to satisfy the requirement of the call obligation.

Carrier asserts that its records clearly show that the District Manager called him on those dates, but observes that Claimant was not at home to receive the calls. It avers that it fully complied with the requirements governing such type calls and contends that the instant claim lacks persuasive substantiation. It argues that the documentary evidence adduced by Claimant, namely his two (2) handwritten letters to General Chairman W. E. Allen, are mere self serving assertions and not explicit verifiable indications that other persons were present in his home.

In our review of this case, we agree such listing by itself is not dispositive proof. Claimant's petition would have been significantly strengthened if he had submitted signed letters by these persons attesting that they were present in his home on the cited dates. This added corroboration would have qualitatively enhanced his petition and provided the additional necessary weight to support his claim. In the absence of such correlative proof we have to conclude that it is indeterminate, at best, whether the Agreement was violated.

While a stand-off appears evident in the parties' positions, we believe that Claimant as the moving party has the primary obligation to affirm the efficacy of the claim. To be sure, he cited a potential violation of the Agreement when he apprised Carrier that junior employees were called to perform the overtime work, but Carrier properly responded to his arguments when it produced evidence that the District Manager called his home. Claimant asserted that other persons were at his home on the claimed dates and listed the names of several individuals in his two (2) letters to the General Chairman. But these letters represent mere assertions not verifiable proof. We will deny 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

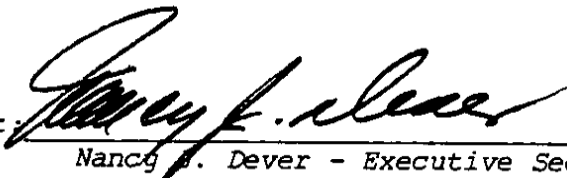
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy A. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of September 1984.