

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25230
Docket Number CL-24103

Herbert Fishgold, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: Claim of the Committee of the Brotherhood (GL-9419) that:

- Claim 1. (a) Carrier violated the Agreement when on July 4, 1979 Clerk H.D. Swann's job (Job 102-04) was pulled off for the holiday and then later worked by an extra employee.
- (b) Carrier shall, because of the violation cited in 1 (a) above, compensate Claimant one day's pay at time and one half for July 4, 1979.
- Claim 2. (a) Carrier violated the Agreement when on July 4, 1979 Clerk T. Demonio's job (Job 202-04) was pulled off for the holiday and then later worked by an extra employee.
- (b) Carrier shall, because of the violation cited in 2(a) above, compensate claimant one day's pay at time and one half for July 4, 1979.

OPINION OF BOARD: This dispute arises on Carrier's Birmingham Division, Oakworth, Alabama. The date involved in the dispute was July 4, 1979, a National Holiday, and a Holiday provided for in the Holiday Agreement between the parties. For the date in question, Claimant Swann was assigned by bid to the 1st shift, 7 a.m. to 3 p.m., Monday - Friday, Operator's Position. Claimant Demonio was assigned by bid to the 2nd shift, 3 p.m. to 11 p.m., Wednesday - Sunday, Operator's Position.

By Bulletin Board Notice dated July 2, 1979, clerical forces at Oakworth were notified whether their assignments would be pulled off for the Holiday, as in past years. Claimants' assignments were initially scheduled to work; however, a note beside Claimants' designation informed them they would be further advised by the Dispatcher. Subsequently, during the day of July 3, Claimants were advised that their services would not be needed for the Holiday.

Notwithstanding the above, during the 3rd shift, 11 p.m., July 3, to 7 a.m., July 4, Carrier determined that the Operators' assignments at Oakworth would have to be manned, and directed the call office forces to contact Claimants for service on their assignments on the Holiday.

Call office forces called the telephone numbers that Claimants had listed where they could be reached. The record shows that a call was placed to Claimant Swann at 5 a.m. and to Claimant Demonio at 1:05 p.m. However, as neither Claimant could be reached, it was necessary to call an extra employee to work each Claimant's shift on July 4.

The Organization contends that both Claimants were denied the opportunity to work on the July 4 Holiday, and through no fault of their own, they lost a day's pay at penalty rate of time and one-half to which entitled by agreement. The Organization alleges violation of Rules 7 and 14 due to an extra employee working Claimants' assignments on July 4.

There is no dispute regarding Carrier's decision to blank the assignments on this Holiday. Rather, the dispute involves the change in plans and the resulting requirement that the assignments be worked. The claims are premised on Carrier's use of extra employees to fill Claimants' assignments after Carrier's call office forces unsuccessful attempts to contact Claimants for service on his Holiday.

Claimants acknowledge that they were not available to perform this work. However, the record indicates that they were advised during the day of July 3 that their assignments would be blanked and they made other commitments. Moreover, while Carrier contends that it revised its plans during the 3rd shift, 11 p.m., July 3, to 7 a.m., July 4, it is not at all clear when and how often the call office attempted to contact Claimants. Carrier's call sheet indicated that Claimant Swann was called at 5 a.m. only, while the notation next to Claimant Demonia's name bears a notation "called sev. times last time 1:05 p.m.". It is not clear when, if at all, any earlier call was made.

Under all the circumstances, the Board must find that Claimant's unavailability was attributable to the actions of the Carrier. This conclusion is warranted, in that the Claimants were advised during the day of July 3 that their assignments for July 4 would be blanked, as in past years, and that although Carrier contends that during the 3rd shift it determined the need for working those assignments, the record shows that each Claimant was only called two hours prior to the start of their previously scheduled shift for July 4.

Inasmuch as Claimants were otherwise assigned to work on July 4, and July 4 was a Holiday pursuant to the Agreement, Claimants shall be compensated one day's pay at time and one-half for July 4, 1979.

Accordingly, the claim is 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 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

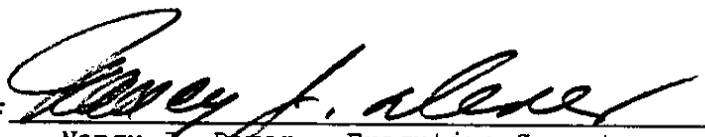
That the claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.