

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25310
Docket Number MW-25266

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The Carrier violated the Agreement when it failed to recall furloughed Trackman E. M. Oyler to service on April 1, 1982 (System File C-TC-1349/MG-3488).

(2) Because of the aforesaid violation, Trackman E. M. Oyler shall be allowed sixteen (16) hours of pay at his straight time rate for April 1 and 2, 1982.

OPINION OF BOARD: By letter of April 20, 1982, the Organization filed a time claim on behalf of E. Oyler, a furloughed Trackman, due to Carrier's alleged violation of Claimant's seniority rights. It was the contention of the Claimant that junior employees were recalled to work ahead of him in violation of the Agreement in force. During the progression of this claim on property the Carrier did not deny that Claimant held seniority or that junior employees had been recalled to work prior to Claimant. Carrier maintained that "telephone calls were made on March 29, 30, 31 ... and Mr. Oyler could not be reached until April 2 at which time he was advised to return to work on Monday, April 5. The younger trackmen reported to work on April 1 as they could be reached by telephone". It further developed that in fact Carrier personnel had contacted Claimant's home and requested the phone number of another junior Trackman on March 30th, but did not at that time talk to Claimant.

Claim before this Board centers upon the action of Carrier in its compliance with the Agreement in force. The Organization argued numerous Rules violations including 2, 3, 5, 9 1/2 and 66. Central to this claim is Rule 5(a) which is the applicable Rule in the "Protection of Seniority When Cut Off and Recalling to Service". Under that Rule employees are required to provide their "name and address" and to provide in writing any "change of address". They are not required to provide telephone numbers, but "recall to service will be at the address on file". The record as developed on property indicates that Carrier personnel took the responsibility of insuring that each employee would receive his recall notification personally. In the instant case Carrier had a contractual responsibility to contact Claimant for recall at the last address on file. In contacting furloughed employees by telephone Carrier did not absolve itself from the seniority recall provisions or that responsibility. From an evidentiary position Claimant should have been informed on March 30th when in fact a call to his home was made and substantiated in the record. Carrier failed to provide any evidence on property as to the telephone calls made on March 29th and further why Claimant was not recalled on March 30th or 31st, 1982. It is the determination of this Board that Carrier failed to meet its contractual obligations. This ruling is consistent with a similar ruling by this Board (Third Division Award 23130).

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

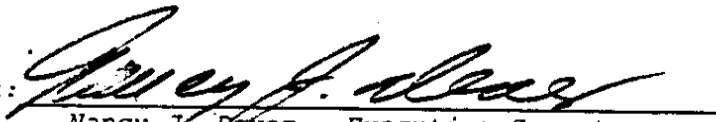
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.