

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25501
Docket Number MW-25303

Herbert L. Marx, Jr., Referee

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

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

(1) The Carrier violated the Agreement when it failed to call furloughed Trackman T. J. Darscheid for extra work December 19, 1981 through December 25, 1981, both dates inclusive, but called and used junior furloughed trackmen therefor (System File C-TC-1285-A/PM-MW 8-32).

(2) Trackman Y. J. Darscheid shall be allowed forty (40) hours of pay at his straight time rate, forty-seven (47) hours of pay at his time and one-half rate and seven and one-half (7-1/2) hours of pay at his double-time rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: Claimant was furloughed as a Trackman on November 25, 1981. At that time, he met the requirements of Rules 5 and 12 by indicating his wish to be recalled for available work at the location from which furloughed and supplied the Carrier with his address and telephone number.

Between December 19 and December 25, 1981, the Carrier recalled for temporary work six other Trackmen junior to the Claimant. Since the Claimant was not called by the Carrier for such work, his claim calls for payment of hours assigned to the recalled employees which he was available to perform.

The Carrier's defense is that its Assistant Chief Clerk had received a telephone call from the Claimant on December 1, 1981, (after he was furloughed but prior to the availability of work). In this call, the Claimant allegedly advised the Assistant Chief Clerk "not to give his telephone number and address to anyone". The Claimant denies making such a call at the time specified.

The Board finds the dispute over the facts concerning the telephone call immaterial to resolution of the claim. Even assuming such a call was made, this would not preclude the Carrier from using the information in its possession to telephone the Claimant. Further, the Organization presented a statement during the claim handling that the Claimant's telephone number was already in possession of the Section Foreman who, according to the Organization, was the person recalling the required employees.

As to the number of hours claimed, the Organization properly seeks those hours worked by any one of the junior employees which would have been available to the Claimant if he had been recalled. (The propriety of the claim at premium rate is well established in the overwhelming majority of awards of this Division.)

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1985.

