

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25691
Docket Number CL-25900

James Robert Cox, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9950) that:

1. The Carrier violated Rules 9 and 31 of the controlling Agreement when on October 6, 1983, it used Mr. G. R. Houseinga with a seniority date of October 19, 1979 to fill Position #032, Yard Clerk, Clinton, Iowa instead of calling Mr. W. E. Mast, seniority date of June 5, 1978 for the job.

2. The Carrier shall now be required to compensate Mr. W. E. Mast eight (8) hours' pay at the time and one-half rate, at the rate of Position #032, for October 6, 1983, account this Agreement violation.

OPINION OF BOARD: The Carrier called an employee junior to Claimant Mast on overtime in the Yard Clerk position at Clinton, Iowa, October 6, 1983. After there had been no response to a single telephone call to Claimant's residence, the job was filled by calling the next individual on the Overtime Board. The call was allegedly made at 2:30 p.m. and the job assignment commenced at 3:59 p.m.

Claimant contends that he was home at 2:30 but did not hear the phone ring. The Organization argues that the single call was not a reasonable effort to reach Mast and, upon not receiving a response, Carrier should have made a second call. They cite several Awards requiring Carriers to make "a reasonable effort" to contact employees otherwise entitled to perform overtime work.

The Carrier contends they were not required to make more than one call since no one answered the telephone. They explain that this is not a case where there is evidence that the number may have been misdialed, that the line was busy, or that another individual answered and responded that Claimant was expected to return in a few minutes. The Agreement does not require that any particular number of telephone calls be made. They further assert, that even if a second call should have been made, there is no basis for a remedy at the overtime rate since no actual work was performed. Third Division Awards 16033, 18942 and 19884. The Organization responds that the remedy argument had not been raised on the property and should not be considered by the Board. Awards 21073, 20895, 20288, 20235, 20208, 20166 and 19028. They cite several decisions where the Third Division has allowed claims for compensation that the individual would have received had the contract not been violated, including Awards 13928, 13946, 14074, 12769, 19947 and 20413. In view of our determination, we do not reach this issue in this case.

The evidence does not establish that Carrier was dilatory in their efforts to assign the overtime work. They had only an hour and one half to contact an available employee who would have to get ready and travel to the property during this time period. There was no indication that the Carrier had previously bypassed senior employees in overtime assignments through delay in contacting them. Under these circumstances, we find that the Carrier did make a reasonable effort to contact Claimant.

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 J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1985.

LABOR MEMBER DISSENT TO
AWARD 25691 DOCKET NO. CL-25960
(REFEREE JAMES ROBERT COX)

RECEIVED

NOV 10 1955

THIRD DIVISION

The Majority opinion has erred in it's decision which is contrary to the weighted authority within the industry. On page two of their opinion they offer the following conclusion:

"The evidence does not establish that Carrier was dilatory in their efforts to assign the overtime work. They had only an hour and one half to contact an available employe who would have to get ready and travel to the property during this time period. There was no indication that the Carrier had previously bypassed senior employees in overtime assignments through delay in contacting them. Under these circumstances, we find that the Carrier did make a reasonable effort to contact Claimant."

It was clearly presented in the record and before the Board that the hour and one half for contacting an employe for service is a standard calling period within the industry and has been the historical calling period used on this property. It was further pointed out that the Claimant resided in the town of Clinton, Iowa, and was rested, qualified and available for service as he never left home and was near his telephone at all times.

The Carrier states that their records verify the fact that the Agent made a single call to the Claimant's residency. The Carrier's alleged records were never offered on the property or before the Board, but for the sake of argument and assuming that one call was made the single issue to have been decided by this Board was

whether or not the Carrier made a sufficient effort to call the Claimant for the vacancy. One possible attempt is not considered reasonable and is a violation of Rules 9 and 31. A legion of Awards from this Board have held that a single attempt to call an employe for work is not sufficient cause to run around him and use a junior employe for potential overtime work.

Award is palpably in error and flies in the face of far better reasoned Awards such as Third Division Awards 17116, 17533, 4189, 16279, 17183, 18425, 18870, 19383, 16033, 18942, and 19884 to name just a few. Award is of absolutely no precedential value and we strenuously dissent to it.


William Robert Miller Labor Member

Date November 13, 1985