NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25833
Docket Number SG-25916

THIRD DIVISION

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(National Railroad Passenger Corporation

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation that:

"(a) The Carrier has violated the current Agreement between the BRS and the N.R.P.C., in particular, Article 2, Section 23H, which states: Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employe who will otherwise not have forty hours of work that week; in all other cases by the regular employe.

(b) The Carrier did in fact violate the Agreement on January 15, 1983, when the Trouble Desk's Ass't Foreman called W. C. Tennis to work Portal Tower from 12:00 noon to 12:00 midnight. The Carrier failed to call Mr. M. J. Howard who is the regular assigned man at Portal Tower to work on January 15, 1983, instead the Trouble Desk's Ass't Foreman called Mr. Howard to work on January 16, 1983 from 12:00 Midnight to 12:00 noon.

Based on the above facts and that Mr. Howard was available to work on January 15, 1983, we, the Brotherhood of Railroad Signalmen, Local 102, feel Mr. Howard should be paid 12 hours' pay at the rate of time and one half." [Carrier file: NEC-BRS-SD-162]

OPINION OF BOARD: This Claim was filed by the Organization letter of March 12, 1983, in which it was alleged:

> The Carrier did in fact violate the Agreement on January 15, 1983, ... The Carrier failed to call (Claimant) . . . who is the regular assigned man at Portal Tower to work on January 15, 1983, instead the Trouble Desk Ass't Foreman called (Claimant) to work on January 16, 1983 from 12:00 midnight to 12:00 noon.

Section 23(h) of Article 2 of the applicable Agreement provides that when work is required on a day which is not part of any assignment it is to be performed, with certain exceptions not applicable here by "the regular employee".

By letter of March 31, 1983, the Carrier denied the Claim stating:

> An investigation of your Claim reveals that the Trouble Desk did indeed attempt to contact (Claimant) via telephone to offer him the overtime, but at that time there was no answer at (Claimant's) home.

By letter of May 18, 1983, the Organization advanced the Claim stating it "did not concur" with the Carriers decision and on the same date it sent a letter to the Assistant Regional Engineer Early repeating the Claim as set forth in the March 12 letter. On June 20, 1983, Early declined the Claim, stating the Trouble desk did call. The Organization thereafter progressed the Claim further and it was discussed in conference on September 1, 1983. On September 29, 1983, the Carrier denied the Claim and furnished the Organization with a copy of the Trouble Desk Log which indicates an attempt to reach Claimant at 9:14 A.M. on the date in question.

It is undisputed that Claimant was entitled to be called as the "regular employee."

In its ex parte submission the Organization argues "Carrier did not make as much effort to call Claimant as it should have, i.e., one attempted call is not enough" and cited several Awards in support of this position. The Carrier contends this is new argument and notes that throughout the handling on the property the Organization position was no call had been made. The Carrier, citing precedent, argues this is new argument and cannot be considered. Further the Carrier states it is normal Trouble Desk procedure to redial numbers when a busy signal or no answer results from the first dialing.

The Organization believes there is nothing new in its argument contending the Claim of failure to call includes and implies failure to properly call or make reasonable efforts to call.

Assuming, without deciding, that this position is correct this Board is still faced with a basic evidentiary conflict. The Carrier asserts the call was made - Claimant asserts it was not, or at least if it was it did not reach him although he was present at home to receive it. If we are to consider the somewhat belated argument that more than one call should have been made we are faced with the equally belated contention that such calls are in fact re-dialed. This is just the type of conflict in evidence that this Board is not in a position to resolve. As was stated in Third Division Award 21436:

> "This Board has no way of resolving an irreconcilable dispute on facts. We have been faced with such situations many times and have held consistently that under such circumstances the Claim must either be denied or dismissed."

That is precisely the situation in which this Board finds itself. Accordingly the Claim must be denied.

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 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 13th day of January 1986.

LABOR MEMBER DISSENT

TO

AWARD 25833 - DOCKET SG 25916

(REFEREE - CLONEY)

Unfortunately, the Majority in their findings have opted to conclude that a "basic evidentiary conflict" precludes the resolution of the instant dispute. The Majority has erred.

As presented, the evidentiary record succinctly developed that if Carrier did, indeed, call claimant for overtime service, as Carrier contends, such call was made only once. A number of sound awards have consistently held that one call is not sufficient to discharge Carrier's obligation to make a reasonable effort to contact the proper employee for overtime service (Third Division Awards 19658, 20119, 21707, 21222, 22217, etc.) Basically, absent emergency, one call is not sufficient.

The evidentiary record further developes that Carrier never contended that more than one attempt was made to contact claimant for overtime. In fact, Carrier clearly cites on page 10 of its Ex Parte Submission that "... a telephone call was made to claimant's home...." Moreover, Carrier offered as Exhibit No. 6, documentation that bears out the fact that claimant was called but one time. Carrier's rebuttal statement suggested that it is normal practice to redial a phone number that registers busy or no-answer is received, yet, in the instant case, Carrier never contends or implies that claimant's phone number was re-dialed. Therefore, there is no irreconcilable dispute on facts.

The Organization's citation of awards that have upheld the principle that one call is not sufficient certainly cannot be considered new argument. Such awards merely address Carrier's admission that only one call was made and were properly before the Board for consideration. The Majority failed to address the issue and the claimant has been caused to suffer needlessly. I dissent.

V. M. Speakman, Jr., Labor Member