

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26200
Docket Number MW-26254

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

(1) The Carrier violated the Agreement when it assigned B&B Mechanic M. E. Campbell to perform overtime service on June 24 and 25, 1983, instead of calling and using B&B Mechanic J. R. Johnston who was senior, available and willing to perform that service (System Docket CR-534).

(2) B&B Mechanic J. R. Johnston shall be allowed thirteen (13) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: On June 24 and 25, 1983, overtime service by a Bridge and Building Mechanic was required at a derailment in Pittsburgh, Pennsylvania. Carrier used a junior Mechanic instead of Claimant. Claimant alleges that as the senior employee, he should have been called and therefore should be compensated for the thirteen hours at the time and one-half rate for this Agreement violation.

The Organization argues that Claimant was fully qualified and available to perform the service. No calls from Carrier were received at Claimant's home. Written statements from Claimant, his wife, and his mother supported that fact. Even if Carrier made one call, that does not constitute a reasonable effort to contact him. The Track Foreman instead called his son, which the Organization believes is highly suspicious.

Carrier points out that it was faced with an emergency: a train had derailed and was blocking Pitt Interlocking. The Track Foreman was told to have his men report for duty. The Track Foreman called Claimant, but there was no response. He had no time to make repeated calls and therefore called someone else. Contained in the record are statements from Claimant and his family attesting they were home at the time of the alleged call and the phone did not ring. We also have a statement from the Track Foreman attesting that he called Claimant between 11:00 and 11:15 P.M. and received no answer.

As noted 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."

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

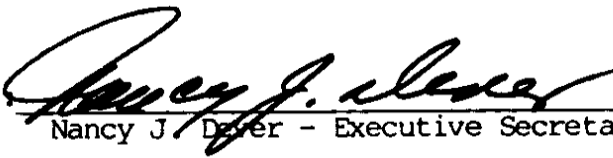
That the facts are in dispute.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 12th day of December 1986.