

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26219
Docket Number MW-26447

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
(Northern 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 J. H. Escojido to service on and subsequent to April 2, 1984 (System File C-TC-2141(b)/MG-4640).

(2) Claimant J. H. Escojido shall be allowed pay equal to that paid to a junior trackman beginning April 2, 1984 and continuing until the claimant is recalled to service."

OPINION OF BOARD: Following his being placed on furlough on August 23, 1983, Claimant filed a notice indicating his desire to be recalled to any force on his Seniority District headquartered in camp cars. The Organization alleges that when Carrier required furloughed Trackmen to return to service on September 16, 1983, it recalled Trackmen junior to Claimant. It did so as well, the Organization contends, on and subsequent to April 2, 1984, dates that are at issue in this Claim.

The Organization argues that Carrier has failed to provide evidence to prove that a recall notice was sent to Claimant or received by him in 1983. Carrier also did not substantiate its contention that Claimant had been called on two separate dates. Even if Claimant had been called, a telephone call is not an acceptable substitute for a written notice.

Carrier insists that Claimant forfeited his seniority for failure to respond to recall under Rule 13(b) (Notice of Desire to Retain Seniority). Claimant was recalled by letter of September 16, 1983. He was also telephoned on September 16 and 19, 1983. A message to call the Manager-Engineering was left with a woman answering Claimant's phone on September 19. Claimant, however, did not reply. The Organization has failed to produce evidence of a probative nature to support its allegations.

This Board agrees with Carrier that in cases in which Rule violations are alleged, the Organization bears the burden of providing sufficient evidence to support its Claim. By letter to the Manager, Labor Relations dated May 14, 1984, the General Chairman indicated that the Organization had a statement from Claimant that he had never received a letter of recall or any telephone messages. That statement was never produced. Carrier, on the other hand, offered into evidence a copy of the letter sent to Claimant as well as a copy of Claimant's request to retain his seniority rights with notations indicating six telephone calls on September 16 and 19. Based on these documents, this Board is convinced that a sufficient effort was made to contact Claimant.

At the same time, it appears from the record that following Carrier's final declination of the Claim on July 9, 1984, the Organization failed to come forward with a statement on the property prior to filing with the Board on April 8, 1985 taking issue with that decision. Subsequent objections made before this Board consequently come too late to be considered.

Given this defect and the Organization's failure to sustain its burden of proof, 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 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

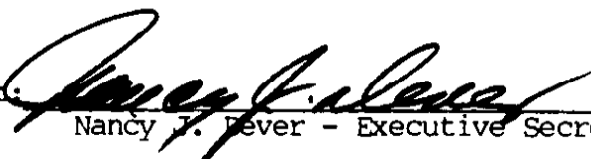
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1987.