

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26384
Docket Number MW-26162

Marty E. Zusman, Referee

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

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

1. The Carrier violated the Agreement when it failed to permit Trackman J. M. Brown to displace a junior trackman (T. Wolfe) on Force 1263 on the Alleghany Subdivision September 26 through October 10, 1983, both dates inclusive (System File C-TC-1978/MG-4319).

2. Claimant J. M. Brown shall be allowed eighty-eight (88) hours of pay at his straight time rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: Claimant was furloughed from his Trackman position on September 23, 1983. When he returned to service on October 11, 1983, he determined that a junior employee had been working in his absence. There is no dispute in the record that a junior employee was working during the Claimant's furlough.

The Organization advances this Claim on the grounds that the Carrier violated Rules 2, 3, and 5. The Organization maintains that when the Claimant was furloughed he was advised by Carrier Officials, including the Engineer of Track and the Assistant Track Supervisor, that he did not stand to work. Having made every effort and been inaccurately informed that he had no work opportunity on his home division or the region, the Claimant lost work and the Claim should therefore be sustained.

As a preliminary point, objections are raised by the Carrier over evidence and argument which it maintains were not advanced on the property. This Board concludes that the objection must prevail in that our review finds no evidence that such argument and internal correspondence was developed, discussed and made a part of the record on the property.

The probative evidence in the alleged violation of Rules indicates that on this property the responsibility is upon the employee who is "obligated to notify the proper representative" of the Carrier in order to make a displacement. It is clear from the record that the Claimant did not do so. In his defense he argues with supporting documentation that he was advised by Engineer of Track and Assistant Track Supervisor that there were no junior employees working. Those men both deny that they told the Claimant anything other than that, they "did not know if he stood to work" and "he would have to talk to the supervisors" to determine if he might be able to displace.

The burden of proof is on the Organization to establish by probative evidence the supporting facts of its Claim. In the instant case, there is no evidence of a Rule violation by the Carrier. This Board also finds no evidence that the Claimant attempted to contact the appropriate Supervisor and his failure to do so resulted in his failure to work (Third Division Award 22517). The Claim must therefore 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 Employee involved in this dispute are respectively Carrier and Employee 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 25th day of June 1987.