

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26562  
Docket Number MW-26362

Peter R. Meyers, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Agreement was violated when Foreman G. R. DeWitt was not used to perform overtime service on his assigned section territory from 10:00 A.M. on March 31, 1984 to 6:00 A.M. on April 1, 1984 (System File 20-33-8417/-11-1580-220-409).

(2) Foreman G. R. DeWitt shall be allowed twenty (20) hours of pay (\$386.90) at his overtime rate."

OPINION OF BOARD: At the time this dispute arose, Claimant temporarily was the assigned relief Foreman for Carrier's Gilman, Illinois, section. On March 31, 1984, Claimant's regular rest day, a derailment occurred east of Fairbury, Illinois, within the Gilman section. Carrier assigned the El Paso, Illinois, Section Foreman and employees from both the El Paso and Gilman sections to perform overtime work at the derailment site; the work was completed in twenty hours. The Organization thereafter filed a Claim on Claimant's behalf, asserting that Claimant should have been assigned to perform the work.

This Board has reviewed the record in this case, and we find that there is sufficient evidence in the record to support the Claim that the Carrier violated the Agreement when the Claimant was not used to perform the overtime services on March 31, 1984. Although the Carrier contends that a telephone call was made to the Claimant, apparently after merely dialing the telephone once and receiving no answer, the Carrier's representative went on to call another employee. Although this Board recognizes that there was an emergency and the Carrier needed manpower immediately, the Carrier still has the responsibility of making a reasonable attempt to reach the employee who is entitled to the work. As this Board stated in Third Division Award 4189:

"The Carrier admits only one attempt was made to reach employee. Telephone service connections are not infallible, and additional effort might well have been made. Emergency conditions are not shown to the extent to preclude two attempts to reach employee."

This Board finds that the Carrier's efforts to reach the Claimant by telephone were not adequate, and, therefore, the Claim must be sustained.

Although the Carrier contends that if a violation is found, the remedy should be at the pro rata rate rather than at time and one-half, this Board finds that had he worked, the Claimant would have been paid at his over-time rate since the day at issue was his rest day. (See Third Division Award 25601.) Hence the Claim must be sustained at the time and one-half rate.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.