

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (formerly The Chesapeake and Ohio Railway Company)

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

(1) The Agreement was violated when the Carrier called junior employee M. Payden instead of Mr. R. Humes to perform overtime service on Saturday, October 17, 1987 [System File C-TC-4025/12(88-110) COS].

(2) As a consequence of the aforesaid violation, Mr. R. Humes shall be allowed eleven and one-half (11 1/2) hours of pay at the trackman's time and one-half rate."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In response to a requirement for employees to work on a derailment occurring on Saturday, October 17, 1987, the Carrier called a number of employees, including a Trackman junior to the Claimant. The Claimant is a Trackman who was on furlough at the time. The Organization argues that the Claimant's seniority entitled him to be called in place of the junior employee. The Carrier asserted that the Roadmaster did telephone the Claimant and received no answer.

The Claimant contends that no such call was received by him, and no indication of such call appeared on his telephone answering machine.

The Carrier contends that the call was made from a mobile telephone, and thus record of it would not appear on the "logger" utilized on the regular telephone.

To resolve this dispute in facts, the Organization requested during the claims handling procedure that the Carrier furnish a copy of the telephone bill from the mobile telephone, which, according to the Organization, would show all calls, whether completed or not. To this, the Carrier responded, "It is not the Carrier's responsibility to develop information of this type for your claim."


Under the circumstances, the Board finds that the Carrier denied the Organization's request at its peril. The Claim is based on established fact: a junior employee was called in place of the Claimant. The Claimant denies receiving a call. Normal proof (a "logger") was not available, because the Carrier contends another telephone was used. In view of this affirmative defense by the Carrier, the Organization's request for the mobile telephone bill was not unreasonable. Contrary to the Carrier's view, the request was specific and presumably obtainable without undue difficulty.

Thus, this is not a case of irreconcilable conflict of fact, which, if so, would warrant a dismissal Award. In this instance, the Claim must be sustained. As to the wage payment requested in the Claim, it should be at the rate (straight time or punitive) which would obtain had the Claimant been called to work on a Saturday.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day, of March 1991.