

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 28781  
Docket No. MW-28639  
91-3-88-3-494

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 assigned Trackman J. Cable instead of Equipment Operator D. Kinner to perform overtime service operating a front end loader at Shelby Yard in Shelby, Kentucky on October 8, 1987 [System File C-TC-2563/12(88-117)].

(2) As a consequence of the aforesaid violation, Mr. D. Kinner shall be allowed eight (8) hours of pay at his time and one-half rate and four (4) hours of pay at his double time 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.

The basis of the Claim was well understood by the parties on the property with no dispute over Agreement Rule citations or lack thereof. Following a derailment at 5:45 P.M. on October 8, 1989, the Roadmaster obtained assistance in the clean up which required the use of a Front End Loader. Claimant held seniority and alleges that the Carrier failed to call him for overtime, but instead utilized a junior employee.

The Carrier has argued that the Roadmaster made the required call without an answer. The Carrier further maintains that a second machine operator was called and turned down the call, before the junior employee was utilized for two hours at the derailment clearing operation.

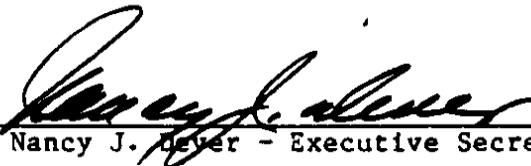
This Board does not agree with the Carrier's contention. We find before us signed letters from Claimant's wife that no calls were received; from the Claimant that he was not called after he returned home, from the other assigned machine operator stating he was not called at all, and from the junior employee that he worked the derailment "all night." Only an unsigned letter which the Carrier states was written by the Roadmaster exists as refutation. We do not accept it standing alone as substantial probative evidence for an affirmative defense. It is not supported by Carrier records of actual time worked by the junior employee, or by any evidence that is beyond doubt a statement of the Roadmaster.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1991.