

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29763
Docket No. MW-29873
93-3-91-3-248

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

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

- (1) The Carrier violated the Agreement when it called junior Track Repairman J. P. Bradley instead of Mr. W. A. Martin to perform overtime service on December 23, 1989 [System File 10(7)(90)/12(90-488) LNR].
- (2) As a consequence of the aforesaid violation, Mr. W. A. Martin shall be allowed 10 hours of pay at his 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 employe or employes involved in this dispute are respectively carrier and employe 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 parties do not dispute the fact that on Saturday, December 23, 1989, when overtime service was to be performed, Claimant, a Track Repairman, was first in line to be called. Carrier maintains that Claimant was called by the Roadmaster, but was told by Claimant's wife that he was not available. Consequently, a Track Repairman junior to Claimant was called and assigned the work.

The Organization contends that Claimant had indicated his interest in working overtime that day, had provided his Foreman with his telephone number and address (in accordance with Rule 30), and neither he nor his wife heard from the Roadmaster.

Carrier argues that where there is an unresolvable conflict in the facts of a case, a claim must be dismissed. It further suggests that little weight should be given a note written by Claimant's wife indicating that she had never received a call from the Roadmaster, since it was not submitted to the Organization until August 14, 1990, and was not passed on to the Carrier until February 28, 1991.

This Board agrees with Carrier that this undated note has very little probative value, because of, among other things, the long lapse in time between the incident in question and when the note was finally submitted to the Organization and Carrier. The Board does not agree, however, that the case must be dismissed because of an irreconcilable dispute in facts.

Rule 30 stipulates that "A reasonable effort must be made to contact the senior employee so registered, before proceeding to the next employee on the register." When a claim is raised alleging that the most senior employee was not called, it is Carrier's responsibility to provide some evidence that a reasonable effort was made. In this instance, the record contains only a "hearsay" statement that the Roadmaster telephoned. There is no written statement from the Roadmaster himself indicating the number he called, when the alleged phone call to Claimant's wife took place, what information he supposedly gave her, and the like.

Because of Carrier's failure to shoulder its burden when the time came to rebut Claimant's assertion, this claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.