

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30548
Docket No. SG-30611
94-3-92-3-387

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Norfolk Southern Railway Company

STATEMENT OF CLAIM: "Claim of the Brotherhood that:

Claim on behalf of C.B. Wham, for 10 hours pay at his punitive rate of pay, account of Carrier Violated the current Signalmen's Agreement, as amended, particularly, the Rules 4 and 49, when it did not call him for overtime work on February 9 and 10, 1991."

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 employee 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 basic facts of this case are largely undisputed. On February 9 and 10, 1991, emergency service work needed to be performed in the Claimant's territory. Ultimately, Carrier called an employee other than the Claimant to perform the work. The Organization filed a claim objecting to the Carrier's failure to call Claimant to perform the work.

The Organization maintains that on February 9 and 10, 1991, Carrier failed to call the Claimant to do emergency overtime work in his assigned territory. Instead, it contends that the Carrier called another employee who was not assigned to the territory where the work was performed. The Organization argues that the Carrier's actions violated Rule 49 of the parties' Agreement. Therefore, it asks that its claim be sustained.

Carrier maintains that its operators attempted to call Claimant several times at both of the telephone numbers he had provided. It also alleges that Claimant's supervisor attempted to contact him by telephone. Carrier contends that there was no answer to any of these calls. It asserts that Claimant was not home when the calls were placed. Carrier further maintains that if there was an answering machine at one of the numbers Claimant had provided, as Claimant alleges, then it was not functioning properly. Since the work needed to be performed, Carrier argues that it was justified in calling another employee. It insists that it did not violate the Agreement. Therefore, it asks that the Organization's claim be denied in its entirety.

After careful review of the entire record, we are convinced that the claim must be denied.

It is undisputed that the Carrier called an employee other than the Claimant to perform emergency work in the Claimant's territory on February 9 and 10, 1991. There is no dispute that Claimant, in the first instance, is entitled to receive these calls.

The record indicates that the Claimant had furnished two telephone numbers for the Carrier to call, one of which had an answering machine. The Carrier claims that numerous calls were made to both numbers and that no one answered. It also insists that there was no answering machine at either number.

The Organization has not disputed the Carrier's assertions regarding the calls it alleges to have made. It has not requested documentation concerning which telephone numbers were actually called. Nor has it requested verification that the calls were made. The Claimant has not alleged that he or anyone else was at either number when the calls were made. Moreover, the Claimant has failed to establish that his answering machine was functioning properly.

Thus, the Carrier's assertion that it attempted to call the Claimant several times remains totally un rebutted by the Claimant. Having failed to reach Claimant after making these attempts, Carrier was justified in calling another employee to perform the necessary work. Its actions did not violate the Agreement. Therefore, the claim must be denied in its entirety.

AWARD

Claim denied.

Form 1
Page 3

Award No. 30548
Docket No. SG-30611
94-3-92-3-387

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 9th day of November 1994.