

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30591
Docket No. MW-29419
94-3-90-3-346

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 Employees
(
(Union Pacific Railroad Company

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

- (1) The Agreement was violated when the Carrier assigned Track Machine Operator R.L. Larkin instead of Sectionman V.E. O'Toole to perform overtime service cleaning snow from switches on February 5, 1989 (System File S-158/890247).
- (2) As a consequence of the aforesaid violation, Sectionman V.E. O'Toole shall be allowed nine (9) 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 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 dispute involved herein.

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

Claimant seeks compensation for Carrier's alleged failure to call him for overtime service on February 5, 1989, in Marysville, Kansas. The work involved the removal of snow from switches. Claimant, a sectionman in the Track Subdepartment on the Kansas Division, held a regular assignment on Section 4841 on the days prior to February 5. The work, which the Organization claims took nine hours and Carrier maintains took seven, was performed by a Track Machine Operator who did not have sectionman's seniority on Marysville Section 4841.

This Board has reviewed the record of this case and finds, at the outset, that there is a basic dispute in facts that is unresolved. In response to a query from the Superintendent on April 11, 1989, the Supervisor wrote, "Mr. O'Toole was not at home, when he was called. He showed up sometime later (3 hrs.) - after we had found other help."

Claimant submitted statements from himself as well as from his wife and small son, dated May 22, 1989, which state that he was home all day on February 5, 1989. Carrier questions the accuracy of these statements, since in all three, the date of February 6 was initially written in and then crossed out, with February 5 put in its place.

This Board is unable to determine from this record whether Carrier, in fact, failed to call Claimant. We have held in numerous other Awards that where there is a dispute in facts, it falls to the moving party to present sufficient evidence of a probative nature to convince the Board that its version of events is correct. The evidence in this case falls far short of meeting that burden. As a consequence, the claim must be dismissed.

AWARD

Claim dismissed.

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 2nd day of December 1994.