

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30916
Docket No. MW-30250
95-3-91-3-714

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
(
(Bessemer and Lake Erie Railroad Company

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

(1) The Agreement was violated when the Carrier assigned junior Laborer J. P. Pascazi, Jr., instead of senior Laborer H. C. Patterson, to perform overtime service on July 28, 1990 (Case 395).

(2) Laborer H. C. Patterson shall be allowed thirteen (13) hours' pay at the appropriate straight 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 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 Claimant, a Track Laborer, was regularly assigned to Zone Gang D under supervision of a Track Supervisor and a Gang Foreman. He was on vacation Monday-Friday, July 23-27, 1990. Prior to leaving on vacation, there is no dispute he advised the Track Supervisor and Gang Foreman that he would be available for overtime work on July 28-29 and would be at home on July 27 for notification thereof.

The Track Supervisor assigned an employee junior to the Claimant for 13 hours' overtime work on July 28. There is no dispute that, if notified and available, the Claimant would have been entitled to the overtime assignment.

The Carrier advised that weekend overtime assignments, when known in advance, are scheduled during the day on Friday. The Carrier further contends that the Track Supervisor telephoned the Claimant at home during the day on Friday and, when receiving no answer, proceeded to assign a junior employee.

In response, the Claimant provided a statement that he was at home on Friday and that he received no telephone call for overtime work. In support of this, the Organization provided a written statement from the Gang Foreman, stating that he had telephoned the Claimant without difficulty Friday evening -- not for the purpose of scheduling the Claimant for overtime, but to arrange for car pooling in the event that he had received an overtime call. The fact that the Claimant was at home Friday evening does not, of course, prove that he was available to receive a telephone call during the day.

The Board notes from the record that the Claimant's request for overtime, made before leaving on vacation, was not forgotten, as indicated by the Gang Foreman's statement that the Supervisor "understood" concerning the Claimant's availability. The Board further notes that the Claimant was on vacation on the day notification would normally be made; this did not eliminate him from consideration, but it did make the scheduling somewhat more complicated than if he had been on duty on Friday.

The fact remains that the Board is faced with the irreconcilable positions that (a) the Claimant was called for service, but there was no answer and (b) the Claimant was at home, but received no call. Given the Board's inability to resolve this conflict in assertions, the claim does not yield to resolution.

AWARD

Claim dismissed.

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O R D E R

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 8th day of June 1995.