Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31974
Docket No. CL-32291
97-3-95-3-121

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11130) that:

1. Carrier violated the Agreement on June 16, 1993, when it failed to properly call Claimant, L. B. Peterson, to fill a video vacancy but instead called junior employe C. D. Douglas.

2. As a result of the above violation, Carrier shall compensate Claimant eight (8) hours' pay at the applicable overtime 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 were given due notice of hearing thereon.

On June 16, 1993, a video vacancy existed on the third shift at the Carrier's Southpoint facility. The Organization asserts that Claimant was available to fill that vacancy, but was improperly passed over.

Claimant maintains two phone numbers. The Carrier's records indicate that for this vacancy Claimant's first phone number was called at 10:05 P.M. and Claimant's second phone number was called at 10:07 P.M., both with no answer. The Caller proceeded down the list and the vacancy was filled by an employee junior to Claimant.

Claimant states in the claim:

"I was at home. I now have an answering machine. My phone rang twice but no message was left."

Based on its records, the Carrier asserts that no answering machine was encountered by the Caller; Claimant was appropriately marked as "no ans[wer]"; and the Caller properly moved on to the next employee.

The thrust of the Organization's position in this case relies upon instructions issued by the Carrier on October 14, 1993. Those instructions state:

"* * *

When more than one telephone number is listed:

* Call the first number listed.

* If no answer, indicate the time called on the call sheet then immediately call the second number.

* If no answer, indicate the time called on the call sheets.

* Make a second attempt to call both numbers.

* If no answer at either number, indicate the second time called then go to the next employee listed on the call sheet.

When an answer machine is reached:

* Leave a message on the answer machine as follows:

  'This is the Caller Office, Jacksonville, attempting to call you for an open vacancy.' Hang up.

* Indicate the time called and that you reached an answer machine on the call sheet.

* If the answer machine clearly identified itself as the number you are calling, then go to the next employee else;

* Make a second attempt to call the same number, if you reach the answer machines again hang up and indicate the second time called then go to the next employee listed on the call sheet.

* * *"

The Caller did not follow the instructions relied upon by the Organization. Claimant had two phone numbers. Under the instructions relied upon by the Organization, the Caller was obligated to "Make a second attempt to call both numbers." That was not done.

With respect to Claimant's answering machine, the instructions require the Caller to leave a message. The Carrier argues that, based on its records, no answering machine was encountered. However, that is contrary to a position earlier taken on the property where Director L. T. Bryant stated to Claimant that "... you were called at 22:05 at your first number when the caller reached a answer machine and at 22:07 when they called your second number with no answer" [emphasis added]. The Carrier seeks to explain the contradiction pointing to the call records where indications of calls involving answering machines were duly noted as such and Claimant's calls had no such notation.

Thus, it appears under the Carrier's calling instructions relied upon by the Organization that the Organization's claim has merit. Putting aside the dispute concerning the answering machine, because Claimant maintained two numbers, the Carrier's instructions require the Caller to "Make a second attempt to call both numbers" which was not done. Under ordinary circumstances, we would sustain the claim.

The problem, however, is that the Organization relies upon instructions promulgated by the Carrier after the date of the incident. The calling instructions were issued on October 14, 1993. The incident upon which the claim is based occurred on June 16, 1993. While the Organization argues before this Board that the instructions it relies upon were merely a codification of the practice which was in effect on June 16, 1993, there is no evidence in the record to that effect.

To uphold the Organization's position would require that we speculate about the existence of the procedure prior to October 14, 1993. We cannot base an Award upon speculation.

The evidence shows that Claimant was called for the vacancy at both of Claimant's phone numbers. Claimant admits hearing the phone ring at the time the Carrier asserts a call was made. There is no showing at the time the incident arose that a calling procedure then in effect was violated. To prevail in this claim, the Organization had to make that kind of showing as its burden requires. The claim must therefore be denied.

AWARD

Claim denied.

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 6th day of May 1997.