

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 39028  
Docket No. MW-37796  
08-3-NRAB-00003-030153  
(03-3-153)

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call and assign Foreman R. Jeter to overtime repair service on December 11, 2001 at the West End of the P1A in Collinwood Yard at Cleveland, Ohio and instead called and assigned Mr. D. Heller [Carrier's File 12(02-0190) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Jeter shall now be compensated for five (5) hours' pay at his respective time and one-half rate of pay.”

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.

There is no dispute that the Claimant was the first person entitled to be called for the work opportunity in question. According to the Carrier, Roadmaster T. D. Sheffield attempted to call him for the assignment, but learned that he was not at home. As a result, the Roadmaster went on to contact the individual who performed the work. However, the position of the Organization and the Claimant is that the Carrier failed to call him. The Claimant maintains that he was available, but was not called.

Both parties presented statements from the relevant people to support their respective contentions.

Given the competing contentions, we are confronted with a conflict of material fact that was not resolved in the on-property record: Was the Claimant called by the Roadmaster or was he not? Our role is essentially appellate in nature and does not permit us to resolve such evidentiary conflicts. When, as here, we are confronted with such irreconcilable conflicts of material fact, we have no choice but to declare that the Organization's burden of proof has not been satisfied. As a result, we must deny the claim.

**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 22nd day of April 2008.