

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39316
Docket No. MW-37600
08-3-NRAB-00003-020698
(02-3-698)

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

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (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 Richmond Seniority District employes R. Goodman, J. Kenney, R. Griffith and T. Wright for overtime service (gauge track) in the vicinity of Mile Post 94.2 on the Richmond District on the Piedmont Subdivision on May 13, 2001 and instead called and assigned Clifton Forge Seniority District and Central East employes P. Kidd, R. Henry, M. Linkswiler and F. Baker. [System File G33308001/12(01-0450) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Goodman, J. Kenney, R. Griffith and T. Wright shall now be compensated for ‘... 15 hours at time and one half each, plus the Meal allowance expense of \$21.25 and FTV of \$25.00 dollars.)”

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 Sunday, May 13, 2001, the Carrier found need to require rest day overtime service to surface track in the vicinity of Mile Post 94.2 on the Richmond Seniority District, Piedmont Subdivision.

It is the contention of the Organization that the Claimants, who hold seniority on the Richmond Seniority District, were available but not called and thereby suffered a loss of work when the Carrier instead called four employees from the Clifton Forge Seniority District.

In support of its claim, the Organization cites Rule 3, Selection of Positions, where in part it states: "In the assignment of employees to positions under this Agreement, seniority shall govern."

The Organization also references Rule 4, Seniority, Section 5, Seniority Districts, which states: "The seniority rights of employees are confined to their respective seniority districts." Thereafter listed are the separate seniority districts, with Claimants' Richmond district being separate and apart from, among others, the Clifton Forge district.

The Organization also asserts that by failing to call and assign the Claimants the Carrier violated Rule 17, Preference For Overtime Work, Section 1, Non-mobile gangs, which reads as follows:

- “(a) When work is to be performed outside the normal tour of duty in continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them. When work is to be performed outside the normal tour of duty that is not a continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them.

(b) If additional employees are needed to assist in the work, other employees located within the seniority district will be offered/called in the order of their seniority, in the required job class."

It is the position of the Carrier that Roadmaster K. W. Gunter called each of the Claimants, but they did not answer their telephones. In this respect, the Carrier presented during the handling of the claim on the property a written statement from Roadmaster Gunter under date of June 22, 2001 that reads:

"In response to Time Claim G 33308001, on May 13, 2001, Mr. Tucker called me about slow orders on the Piedmont Sub. He wanted people working to reduce the orders. This was Sunday, Mothers' Day, and I ran the Richmond Roster which took about 1 hr. & 30 min. I called the men in question on the time claim – R. E. Goodman, J. F. Kenney, R. D. Griffith & T. E. Wright. Either there was no answer or answering machine. I did not have time to listen to messages on answering machines, therefore I moved on to the next employee. This is why I ended up with employees on the North Mountain side.

Also, two of the employees on that did work on May 13, are floaters whom were eligible to work Richmond District.

Therefore this claim should be denied."

Despite vigorous argument to the Board, we are not persuaded that the claim should be dismissed because it is beyond the Board's province to make credibility determinations.

Sorting out the facts of record and argument of the parties, it seems to the Board that, as requested by the Organization during the handling of the claim on the property, the Carrier was obliged to provide probative documentation in support of the self-serving statement of Roadmaster Gunter; if not a phone bill, then a handwritten listing to show the name of the individuals called; the telephone number(s) dialed; the time each call was made; the number of rings; and, the disposition of each call.

It also concerns the Board that where, on the one hand Roadmaster Gunter asserts there was no answer or answering machine, he would, on the other hand, state that he did not have time to listen to messages or answering machines. We note this especially in view of Roasmaster Gunter asserting he spent 90 minutes making calls and at least one of the

Claimants having stated during the appeal of the claim on the property that he had caller ID at home and there was not a number listed from Roadmaster Gunter; he has a cell phone which Roadmaster Gunter called him on numerous occasions; and, in subsequently speaking with Roadmaster Gunter after May 13, 2001, Gunter told him that he thought the Claimant was flagging on that date, which he was not, and that this raised a question as to why Roadmaster Gunter would call him if he thought he was already working. This on-property statement went unchallenged by the Carrier.

Further, it concerns the Board that the four employees called to work the Sunday overtime were said to be employees that Roadmaster Gunter supervises every day and were working on his territory at the time.

Under the circumstances, the Board will sustain that part of the claim which calls for 15 hours at the time and one-half rate of pay for each of the Claimants. The balance of the claim is denied because there is nothing in the record showing that a meal allowance and travel compensation is payable when an employee, as in the case at issue, does not actually report for and perform work on an assignment.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 29th day of September 2008.