

PUBLIC LAW BOARD NO. 1844

AWARD NO. 10

CASE NO. 3

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when Trackman A. Tweedy was not called and used to perform overtime service on his assigned section territory (Dodge Center, Minnesota) on July 26, 1975 and the Carrier instead called and used junior Trackman D. M. Jensen who was assigned to the McIntire, Iowa section territory, for such service (System File 81-24-48).
- (2) Trackman A. Tweedy be allowed twenty and one-half hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD:

In July 1975 Claimant Allen Tweedy was employed as a trackman on the Central Division Section Crew headquartered at Dodge Center, Minnesota. His work days were Monday through Friday with rest days Saturday and Sunday. On the evening of Saturday, July 26, 1975 Carrier experienced a derailment just north of Dodge Center. Several section employees including men junior to Claimant were called, contacted and used to repair the damaged track. These employees spent approximately twenty and one-half overtime hours performing that work for which they were paid under Rule 31. Carrier insists that supervisory officials tried to call Claimant but unsuccessful in reaching him and accordingly called out a junior man. The

Organization on behalf of Claimant maintains that he was never called and that he was available, qualified and willing to perform the work. In support of his position Claimant proffered letters from his wife and his father indicating that he was home between 12:30 a.m. and 2:00 a.m. on the morning of Sunday, July 27, 1975 and that the telephone did not ring. For its part Carrier presented signed statements from the Roadmaster and the Manager Maintenance Production to the effect that Claimant was called between 11:30 p.m. and midnight on Saturday, July 26, 1975 but did not answer his phone.

The principles governing cases of this type are fairly well established. In order to prevail on a defense of nonavailability under Agreement provisions like Rule 31, Carrier has the burden of showing it made reasonable efforts to contact the senior employee before calling junior men to perform the overtime work. See Awards 5887, 11888, 16081, 17041, and 18425. Thus the only question presented by these facts is whether Carrier has submitted sufficient evidence to carry its burden of proving a reasonable effort to contact Claimant and thereby shift the burden of persuasion to Claimant to prove he was available. Upon careful consideration of the record evidence we are persuaded that Carrier has met its evidentiary burden. The unrefuted signed statements of the supervisory officials show that Claimant was called sometime before Midnight on July 26, 1975 but did not answer the phone. The record shows that on the evening of Saturday, July 26, 1975 Claimant was celebrating his wedding anniversary and was home after 12:30 a.m. the next morning; but there is no evidence indicating his whereabouts before Midnight. On this record Carrier has established a prima facie defense and we cannot find that Rule 31 was violated. Accordingly we have no alternative but to dismiss the claim.

FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

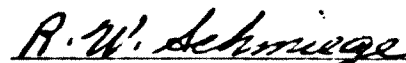
1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
 2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

The claim is denied.


Dana E. Eischen, Chairman


O. M. Berge, Employee Member


R. W. Schmiede, Carrier Member

Dated: Aug 18, 1977