

PUBLIC LAW BOARD NO. 1850

Award No. 14

Docket No. 28
BMW File CUM-619
Carrier File 2-MG-1534

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute The Baltimore and Ohio Railroad Company

Statement of Claim Claim on behalf of Rail Weld Inspector Ronald L. Grapes; Green Spring Welding Plant, Green Spring, West Virginia for eight (8) hours at Class 'B' Operator's rate on account of H. T. Kenney, inspecting welds at Green Spring Welding Plant 4:00 p.m. to 12:30 p.m. on January 16, 1976.

Findings The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 27, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, on January 16, 1976, held Class 'B' Machine Operator's rights and was assigned as Rail Welder - Inspector, First Trick, Green Springs Welding Plant. He finished his regular tour of duty on that date and proceeded directly to his residence where he remained until leaving for work the next day.

On January 16, 1976 two second-shift operators laid off

without telling the Supervisor, H. T. Kenney, one of the senior trackmen on the shift, asked to fill the inspector position which was vacant and needed. He was used.


Claimant was not called for the vacancy because, according to Supervisor MacGregor, he had no telephone number where he could be called. Claimant asserts to the contrary that he listed a telephone with Mr. MacGregor.

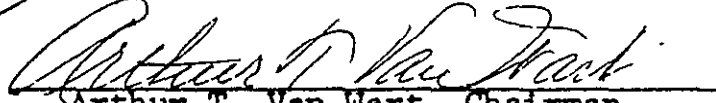
Here, the case turns on the factual question whether or not there was a telephone number given by Claimant to the Carrier in order to be called. The Board cannot resolve that conflict in fact which is necessary to the proper resolution of the instant dispute. Such conflict has been known since at least February 11, 1976 when Claimant was so advised in the denial of his claim.

In the particular circumstances the Board is impelled to dismiss the claim without prejudice to the position of either party.

Award Claim dismissed.


Fred Wurpel, Jr., Employee Member


W. C. Comiskey, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, April 15, 1980.