

PUBLIC LAW BOARD NO. 2452

PARTIES Brotherhood of Maintenance of Way Employes
TO
DISPUTE: and
Western Maryland Railway Co.

STATEMENT Claim on behalf of M. L. Burton, R. E. Munday,
OF CLAIM: C. D. Kerns, J. W. Munday and O. H. Kimble for
fourteen and one-half (14-1/2) hours overtime
for work performed by Production Gang employes
at derailment at Hager Tower from 5:30 p.m.,
July 3 through 8:00 a.m., July 4, 1978.

FINDINGS: By reason of the Agreement dated June 14, 1979, and
upon the whole record and all the evidence, the Board
finds that the parties herein are employe and carrier within the
meaning of the Railway Labor Act, as amended, and that it has
jurisdiction.

The conference issue raised here is comparable to
the same issue raised in Docket No. 2 and resolved in Award No. 2.
For the reasons stated in Award No. 2, this issue is resolved in
favor of the Carrier.

A derailment occurred at Hager Tower, Hagerstown,
Maryland on the claim date. Foreman E. T. Fear and his Yard
Force 1124, headquartered at Hagerstown, were called. Additional
employes were necessary. Production Force 1277, also then working
at Hagerstown, was called. Employes contend that Claimants, who
constituted Force 1103, headquartered at Williamsport, Maryland,
should have been called. By not calling the Claimants, say the
Employes, the Carrier violated the Agreement. Claimants are
entitled to overtime compensation as claimed.

In denying the claim on September 8, 1978, Carrier
stated that Foreman Fear, who was in charge of the derailment,
called Claimant M. L. Burton, Foreman of Force 1103, but there
was no response on the telephone.

Claimants appealed on October 1, 1978 and stated that Burton was available and that when he was not at home, his wife was there to answer the telephone. No telephone calls were received. Employees also contend that if Force 1103 was not available, Force 1102 at Conboy, Pennsylvania should have been called before Production Force 1277 was utilized.

Carrier again denied the claim on September 16, 1978 and again wrote that Foreman Fear called Foreman Burton on the telephone but could not reach him. Carrier also contends that because an emergency existed Foreman Fear utilized Production Force 1277 which was then working at Hagerstown rather than calling Force 1102 which was working at Chambersburg, Pennsylvania, approximately twenty-two miles from the derailment site.

First, there is a conflict of evidence. Carrier maintains that Burton was telephoned but there was no response to the call. Employees say that Burton told them that there was someone at his home when the alleged phone call was made and that no such call was received. There is no way that this Board can determine with certainty who is stating the absolute truth. The presumption, under these circumstances, is with the Carrier. Employees have the burden of proof. Employees have not supported their position with substantial evidence.

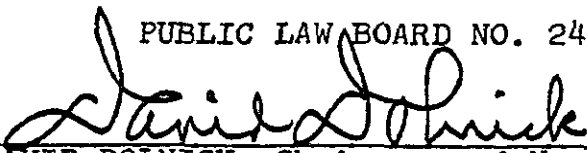
Second, an emergency did exist. To have called Force 1102 would have further delayed the rerailment and the clearing of the tracks for at least another hour. Other trains using the trackage would have been similarly additionally delayed. Production Force 1277, which was on the scene was, under these circumstances, properly utilized.

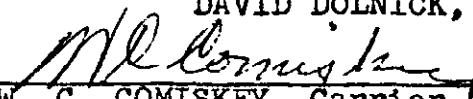
For the reasons herein stated, the Board finds that the Carrier did not violate the Agreement and that the claim has no merit.

AWARD

Claim denied.

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DAVID DOLNICK, Chairman and Neutral Member


W. C. COMISKEY, Carrier Member


WILLIAM E. LA RUE, Employee Member

DATED: April 16, 1980