

PUBLIC LAW BOARD NO. 2452

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

STATEMENT Claim on behalf of C. E. Shahan account of Junior
OF CLAIM: Mechanic working four and one-half (4-1/2) hours
overtime on August 26, 1977 at Gettysburg, Pennsylvania
completing work started by Mr. Shahan.

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.

Employes contend that the claim should be sustained
because the Carrier refused to hold a conference before the claim
was denied by the Carrier's highest appeal officer. The record
shows that the Carrier's highest appeal officer denied the claim
on February 27, 1978. Thereafter, a conference was held on
March 23, 1978 and Carrier's highest appeal officer again denied
the claim on April 10, 1978.

Employes' letter of appeal dated December 30, 1977
is not a request for a conference. The Railway Labor Act provides
that a conference shall be held after a written request is made.
It does not state when such a conference shall be scheduled and
when it should be held. Nowhere in the record is there clear and
convincing evidence that a written request for a conference was
made before February 27, 1978. Neither does Circular No. 1 prescribe
when a conference shall be held.

True, time limits for submission to a Public Law Board or to the National Railroad Adjustment Board commence with the denial of the claim by the Carrier's highest appeal officer. In this instance such time limits commenced on February 27, 1978 and not on April 10, 1978, when the claim was denied after the conference. This may be an arguable issue if it involved a question whether a request for this Public Law Board was timely made. No such an issue exists here. This Board, by agreement of the parties, has jurisdiction to render a decision on this claim.

With respect to the merits of this claim the parties seriously differ on the facts. Employees allege that Mechanic Crissinger and not the senior mechanic Shahan was assigned to work overtime on job SM-818 on August 26, 1977. Carrier alleges that on the claim date Crissinger worked on Tie Remover TR-851. Crissinger did not work on SM-818. If Carrier's allegations are true, the claim fails.

The burden of proof is upon the Employees. They must show by a preponderance of convincing evidence that the facts recited in the submission to this Board are acceptable and true. The only allegation in the record is that the Division Chairman Zembower saw the overtime sheets showing that Crissinger worked overtime on SM-818. In view of the fact that the Carrier has consistently denied that Crissinger worked overtime on SM-818, Employees' allegation is insufficient to establish a preponderance of proof. An affidavit could have been procured from Crissinger. Since Mr. Zembower allegedly saw the relevant overtime sheets, he could have noted the numbers or other identification data, he could have requested a photo copy of the relevant sheet, he could have demanded a copy of the time sheet for that week to determine if Crissinger actually was paid for overtime on SM-818 on the claim date. That would have been the best evidence. In the absence of such evidence the Board must accept Carrier's statements.

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

AWARD

Claim denied.

PUBLIC LAW BOARD NO. 2452

David Dolnick
 DAVID DOLNICK, Chairman and Neutral Member

W. C. Comiskey
 W. C. COMISKEY, Carrier Member

William E. La Rue
 WILLIAM E. LA RUE, Employee Member

DATED: *April 16, 1980*