PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 4
CASE NO. 4

PARTIES TO DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES and FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM:

1. That the Carrier violated the Parties' Agreement when on February 9 and 10, 1980 they failed to utilize the service of Trackman R. D. Christy for overtime work and, in lieu thereof, utilized junior Trackman K. Roberson.

2. That Trackman R. D. Christy be compensated for twenty-two (22) hours and thirty (30) minutes at the punitive rate of pay account this violation.

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 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 sole question before this Board is whether the senior Claimant Trackman R. D. Christy was "available" when the Carrier used junior Trackman K. Roberson in the circumstances of this case and as provided in that part of Rule 21 reading:

"Senior employes in respective rank and gangs will, if available, be called for such overtime."

The facts, according to the Employes, are as follows: "On February 9 and 10, 1980 a snowstorm occurred in the area of Clarendon, Texas necessitating the use of the Section Force on an overtime basis to perform work such as sweeping snow from switches, changing broken rails and strip joints and other problems

relating to the storm.

"Among those employes called was Trackman K. Roberson, with a seniority date of June 26, 1978. Time worked by Trackman Roberson was 3:00 A.M. to 10:30 PM, February 9 and from 12:00 Noon to 3:30 PM on February 10, 1980. Claimant R. D. Christy who is senior to Trackman Roberson, having a seniority date of August 1977, was available during the period Mr. Roberson was used, but he was not called.....

"...Clarendon, Texas, where the track section was headquartered and where the Foreman, the trackmen used, and the Claimant all resided, is a small town where the foreman and all employes of the gang know where everyone lives. ...heretofor employes had been called and used to perform overtime and emergency work and, in each of these instances, the foreman and/or members of the gang contacted each other without undue burden."

The Carrier denies that Claimant was "available" within the meaning of Rule 21. The Carrier states, as fact, that "The record discloses that the claimant does not have a telephone. ***It is customary that employes who desire to participate in overtime work will submit their telephone number to the foreman where they can be reached, either their home phone number or in some cases the phone number of their close relatives or even that of a neighbor."

The words, "if available", in the quoted rule, are not defined by the parties. The Rule reads: "Senior employes in their respective gangs will, if available, be called for overtime work." The absolute requirement that senior employes in their respective gangs will be called for overtime work is made conditional by the terms "if available". The parties apparently intended that in the event an employe who was senior was not available, then such employe need not be called for overtime work. The conditioning terms relate to senior employe availability; they do not appear to relate to the process of being called for overtime work. This seems to be the contractual meaning of the language here in dispute. Accordingly, there is no express or implied requirement in the words of the rule that the senior employes must have telephones. Obviously, this Board is without authority to rewrite the rule by adding such a requirement. The terms, "if available", in Rule 21, would seem to have the usual meaning of "capable of being made use of, at one's disposal, within one's reach" (Perelson, Third Division Award No. 14208), and, in this sense, it is a question of fact as to whether, in the circumstances

of the snowstorm on February 9 and 10, 1980, in the area of Clarendon, Texas, Claimant was indeed within reach of the Foreman and at the Foreman's disposal and capable of being made use of, at 3:00 AM. Although the term "emergency" is not strictly applicable in the circumstances, the Board is impressed by the statement of the Carrier "that the service in question on the morning of February 9, 1980 was of an emergency nature, consisting of cleaning snow from the switches, changing out a broken rail and repairing stripped joints. The time the employes were called was 3:00 A.M. We believe it unreasonable to expect the foreman to travel across town at that hour of the morning during a snowstorm in order to 'notify' him of overtime service being offered."

In the circumstances of this particular case, it is the judgment of the Board that Claimant was not "available" at 3:00 AM on the morning of February 9, 1980.

The facts and circumstances prevailing at 3:00 AM on the morning of February 9, 1980 clearly did not prevail at 12:00 Noon to 3:30 PM on February 10, 1980. In the circumstances, it is the judgment of the Board that Claimant was "available" between 12: Noon to 3:30 PM on February 10, 1980, and, as senior, should have been called for such overtime within the meaning of Rule 21.

A W A R D

1. The Carrier is not in violation of the Agreement in using junior Trackman K. Roberson instead Senior Trackman R. D. Christy, Claimant, for overtime between 3:00 AM and 10:30 PM, February 9, 1980.

2. The Carrier is in violation of the Agreement in using junior Trackman K. Roberson instead of senior Trackman R. D. Christy, Claimant, for overtime between 12:00 Noon to 3:30 PM on February 10, 1980.

3. The Carrier shall compensate Trackman R. D. Christy for three (3) hours and thirty (30) minutes at the punitive rate of pay.

Joseph Lazar

JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

S. E. Fleming

S. E. FLEMING, EMPLOYE MEMBER

B. J. Mason

B. J. MASON, CARRIER MEMBER

DATED: 10-19-81