

Award No. 9
Cases 26, 27 and 28

Public Law Board No. 2630

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employes
and
Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

Claims on behalf of Trackman Fred Larson for five hours on account of Howard Snyder and James Deters working at derailments on September 20 (Case No. 26) and 22, 1977 (Case No. 27) and John Hickox and James Deters working at derailment on September 25, 1977 (Case No. 28).

FINDINGS:

Petitioner contends that junior employes were used instead of claimant on each of the claim dates in these three cases to work at a derailment. According to Carrier, Supervisor Mincer attempted to reach claimant by telephone on each date, but met with no success in that regard. Claimant insists that he was home and available on those dates.

As an appellate board, we are not in a position to resolve questions of credibility, particularly where, as here, neither party has presented sufficient details. We do not have an opportunity to hear the witnesses and observe their demeanor.

The burden of establishing the essential elements of the claim rests with claimant. The claim must be dismissed on the basis of this record. See Third Division Awards 21423 and 20408.

AWARD: Claim denied.

Adopted at Baltimore, Maryland, *October 22*, 1980.

Harold M. Weston, Chairman

M. K. Hornsby

Carrier Member

William B. LaRue

Emplove Member