

PUBLIC LAW BOARD NO. 2960

AWARD NO. 109
CASE NO. 152

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned trackmen junior to Trackmen J. A. Mohr and P. W. VanMeter to perform overtime service on Saturday, November 5, 1983. (Organization File 3T-4400; Carrier File 81-84-96).
- (2) Because of the aforesaid violation, trackmen J. A. Mohr and P.W. VanMeter shall each be allowed eight and one half (8 1/2) hours at their respective time and one half rate.

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

Certain facts are not disputed. On November 4, 1983, the Claimants were employed as Trackmen on a rail gang supervised by Foreman Contreras. At approximately 2:00 p.m., the Claimants

were notified by Contreras that overtime work would be available for them the following day -- a scheduled rest day. Both Claimants agreed to work. It is also undisputed that employees junior to the Claimants performed overtime service the next day and the Claimants did not.

Beyond this, the facts are sharply disputed. The Organization claims -- based on written statements by the Claimants -- that the Foreman later, approximately 5:00 p.m., told them that they were no longer needed. The Carrier denies that such a conversation took place.

This Board has before been faced with disputed facts. Where the conflict is irreconcilable, we have no choice but to dismiss the claim. However, an irreconcilable factual dispute does not arise merely by declaration. In this case, the Organization presented statements by the Claimants that the second conversation took place. On the other hand, the Carrier presents no statement from the Foreman, and relies entirely on an alleged statement by a Roadmaster that such a conversation did not take place. This was raised in the Division Manager's letter of March 2, 1984. Notably, there is not even an actual statement signed by the Roadmaster alleging such to be the case, nor, are there any clear statements as to how the Roadmaster supposedly knew such to be the case.

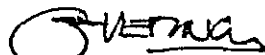
The Carrier has a greater duty in investigating and responding to first-hand factual statements such as those made by the Claimants. They must do more than to have an individual -- far removed from the actual situation -- simply state it is not so.

If there was a statement in the record from the Foreman, or a statement from the Roadmaster saying he was in the presence of the Foreman at all times on the afternoon in question, and that the Claimants were not advised not to come to work, then there might truly be an irreconcilable difference in facts. However, in the absence of such statements, under these circumstances, we must accept the statements of the Claimants as factual.

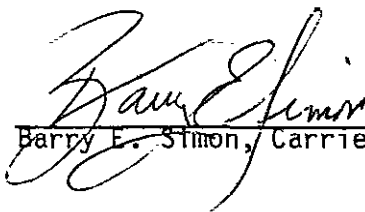
In view of the accepted facts, the Claimants were entitled to the work in question and the Claim is sustained.

AWARD:

The Claim is sustained.


Gil Vernon, Chairman


H. G. Harper, Employee Member


Barry E. Simon, Carrier Member

Dated: April 4, 1986