

PUBLIC LAW BOARD NO. 3460

Award No. 69

Case No. 69

PARTIES . . . Brotherhood of Maintenance of Way Employees
TO . . . and
DISPUTE: . . . Burlington Northern Railroad Co.

STATEMENT
OF CLAIM:

1. The Carrier violated the Agreement when it called and used Junior Furloughed Sectionman, J. W. Freadhoff Jr., to perform temporary service on July 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31, 1982 instead of calling and using Senior Furloughed Sectionman, K. P. Shockman, who was senior, available and willing to perform that service.
2. As a consequence of the aforementioned violation, Claimant K. P. Shockman shall be allowed compensation for all wage loss suffered from July 14 until July 31, 1982."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

There is no dispute but that a Junior Furloughed Sectionman, Mr. Freadhoff Jr., was recalled to work for the days in question, while the Claimant herein, who was senior, was not returned to work the vacancy. Carrier's position is bottomed on its several attempts to telephone the Claimant and its inability to reach him by that mechanism. Petitioner's position, essentially, is that

2

first, the rule does not require a telephone call plus. specifically, Rule 9 provides that employees must file their name and address in writing for the purposes of recall and thus Carrier failed in its obligations by not writing to Claimant for the particular vacancy. It should be noted that a number of relatively peripheral issues related to this matter were also raised by the parties but, in this Board's view, do not have any critical impact on the ultimate determination.

A careful examination of the record of this dispute indicates a rather unique set of circumstances. First, Claimants were not called to their same seniority district, but called to a different seniority district by agreement with the Organization. There were insufficient employees on the district in question to fill the temporary vacancies. The second circumstance, which is rather unique, is that there was no evidence whatever in the record of a call, in terms of the date, time or the personnel who made the particular call or calls to Claimant. Further, there is no evidence to support the contention that the customary method of recalling employees for temporary assignments was by telephone rather than by mail, as apparently contemplated by the Agreement. In addition, Petitioner's claim for overtime payments is without support. There is no evidence whatever that the junior employee worked any overtime whatever during the period and the days in question.

From the entire record of this matter, and in summary, it is concluded that Carrier did not adhere to the Agreement in the execution of its responsibilities in this matter. It did not properly contact Claimant in writing or indeed establish that it had made valid attempts to contact him by telephone in the record of this dispute. For those reasons, the claim must be sustained. However, since there is no evidence to support the claim for premium pay, the compensation due Claimant shall be at straight time rates.

AWARD

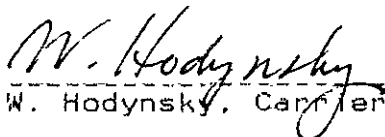
Claim sustained, but at straight time rates only.

ORDER

Carrier will comply with the Award herein within thirty days from the date hereof.



W. M. Lieberman, Neutral-Chairman



W. Hodynsky, Carrier Member



F. H. Funk, Employee Member

9/20/88

St. Paul, Minnesota
August , 1988

3460-69