

**NATIONAL MEDIATION BOARD**  
**PUBLIC LAW BOARD NO. 5564**

<b>BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES</b>	)	
	)	Case No. 4
and	)	
	)	Award No. 3
<b>NORTHEAST ILLINOIS REGIONAL COMMUTER</b>	)	
<b>RAILROAD CORPORATION</b>	)	

Martin H. Malin, Chairman & Neutral Member  
R. C. Robinson, Employee Member  
J. S. Morse, Carrier Member

Hearing Date: May 20, 1996

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it called and assigned junior Assistant Water Service Mechanic D. Linstrot to perform overtime service on December 9, 1994 and January 2, 1995, rather than calling and assigning Water Service Mechanic C. Streeter, Jr. who was senior, qualified and available to perform such service (Carrier's File 08-27-199).
2. As a consequence of the aforesaid violation, Claimant C. Streeter, Jr. shall be allowed twenty-five (25) hours' pay at his respective time and one-half rate.

**FINDINGS:**

Public Law Board No. 5564, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

Rule 18 (I) of the applicable Agreement provides:

When overtime service is required of part of a gang continuous with, before or after the regular work period, the senior available qualified employees in the rank involved shall have preference to such overtime if they so desire.

The Organization maintains that Carrier violated the above quoted Rule by failing to call the Claimant on the dates in question. Carrier maintains that it complied with the Rule because the B & B Foreman tried several times to call the Claimant but reached an answering machine or received no answer. Carrier has submitted a signed statement from the B & B Foreman attesting to having called the Claimant. The Organization has submitted signed statements from the Claimant attesting to having been home, having not received any phone calls from the Foreman, and to not owning an answering machine.


Thus, we are faced with two completely conflicting versions of the events and two completely conflicting signed statements. Resolution of these conflicts requires assessing the relative credibility of the Claimant and the B & B Foreman. As an appellate body, however, we are not in a position to make such a resolution, because we have not had the benefit of observing of the demeanor of the individuals, or the benefit of having the accuracy of their statements tested by cross examination. Faced with only the black-and-white statements, we are forced to conclude that they are equally credible. Because the Organization bears the burden of proving that the facts are more likely than not to be in accord with its position, we are forced to deny the claim.

**AWARD**

Claim denied.

  
Martin H. Malin, Chairman

  
J.S. Morse,  
Carrier Member

  
R.C. Robinson  
Organization Member

Dated at Chicago, Illinois, September 9, 1996.