

PUBLIC LAW BOARD NO. 1844

AWARD NO. 76

CASE NO. 91

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when assigning Maintenance Gang #1 employes to operate Speed Swing on rest days of regular assigned Speed Swing Operator Clayton Tepley at Altoona, Wisconsin (System File 81-19-180).

(2) That Machine Operator Tepley be allowed pay at the time and one-half rate on each of his rest days commencing March 10 and through April 15, 1979. A total of twelve (12) days.

OPINION OF BOARD:

Claimant is a machine operator at Altoona, Wisconsin, who operates the Speed Swing for Maintenance Gang #1 Monday through Friday when an operator is needed. On April 25, 1979 the Organization filed a claim on behalf of Claimant alleging that the Speed Swing had been operated by someone else on weekends (Claimant's rest days) from March 10 through April 15, 1979.


It is uncontested on the record that the Speed Swing was operated on Saturday, April 7, and Sunday, April 8, in connection with a derailment at Milepost 4.8, approximately five miles north of Eau Claire. Carrier asserts that the Roadmaster attempted to contact Claimant at his regular calling place but was unable to reach him. Claimant concedes he was not at his


regular number, but he had left an alternative number with his foreman. In the absence of a showing that the Roadmaster had actual knowledge of Claimant's alternative number, we find that Carrier fulfilled its obligations to Claimant under Rule 31 by calling his regular number. Consequently, we do not find that Carrier erroneously assigned operation of the Speed Swing on Claimant's rest days of April 7 and 8.

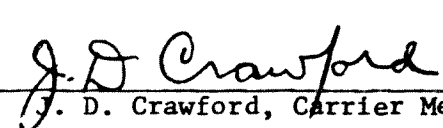
With respect to the other weekends cited by the Organization, the only "evidence" of the Speed Swing's use on those days is a letter signed by Claimant dated January 11, 1980. This letter, submitted late in the grievance process, constitutes a bare assertion unsupported by any probative factual evidence. It cannot be viewed as establishing a prima facie case against the Company, and the burden of proof does not shift to Carrier to refute a bare allegation. Accordingly, the fundamental issue of reservation of Speed Swing operation raised by the Organization is not reached on this record.

AWARD

Claim dismissed.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


J. D. Crawford, Carrier Member

Date: April 2, 1981