

PUBLIC LAW BOARD NO. 1837

Award No. 102

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NORFOLK AND WESTERN RAILWAY COMPANY**

Statement of Claim:

1. The Agreement was violated when the Carrier failed and refused to recall furloughed Crossing Watchman B. C. Furman to perform crossing watchman duties performed by J. K. Grace on March 29 and 30, 1995 and crossing watchman duties performed by F. Orloff on April 6, 1995 (Carrier's File MW-FTW-95-16).
2. The Agreement was further violated when the Carrier failed and refused to recall furloughed Crossing Watchman B. C. Furman to perform crossing watchman duties performed by F. Orloff on the dates of August 28, 29, 30, 31 and September 1 and 4, 1995 and crossing watchman duties performed by D. Lance on September 5, 6 and 7, 1995 (Carrier's File MW-FTW-95-57).
3. As a result of the violation in Part 1 above, B. C. Furman shall be compensated twenty-four (24) hours' pay at the crossing watchman's straight time rate and that his benefits shall be reinstated effective March 29, 1995.
4. As a result of the violation in Part 2 above, B. C. Furman shall be compensated seventy-two (72) hours' pay at the crossing watchman's straight time rate and that his benefits shall be reinstated effective August 28, 1995.

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

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

AWARD

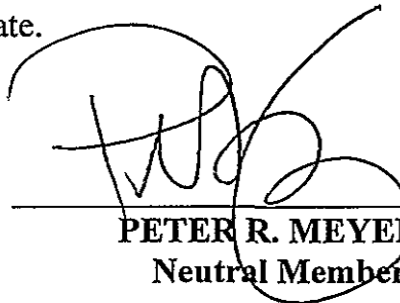
This Board has reviewed the record in this case and we find that the Organization has failed to meet its burden of proof with respect to claims 1 and 3. The Agreement was not violated when the Carrier failed to recall furloughed crossing watchman B. C. Furman to perform the crossing watchman duties performed by J. K. Grace on March 29 and 30, 1995 and the crossing watchman duties performed by F. Orloff on April 6, 1995. Since the Organization bears the burden of proof and has failed to present sufficient evidence to support those claims, claims 1 and 3 are denied.

With respect to claims 2 and 4, this Board finds that the Organization has submitted sufficient proof to demonstrate that the Carrier violated the Agreement when it failed and refused to recall furloughed crossing watchman B. C. Furman on some of the dates set forth in Paragraph 2 of the claim. On eight (8) of the days set forth in Paragraph 2, we find that the Carrier should have known about the vacancy, and therefore, it should have recalled the furloughed Claimant to perform the work. Since the Carrier did not act

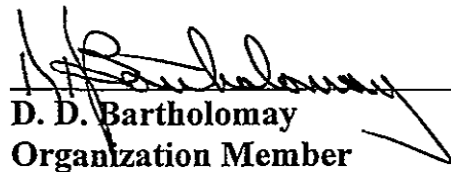
within the Agreement on those eight (8) dates, this Board must sustain the claim in part awarding the Claimant 64 hours at the crossing watchman straight time rate.

AWARD:

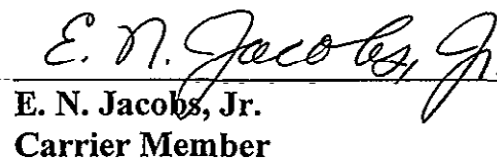
Claim sustained in part. Claims 1 and 3 are denied in their entirety. Claims 2 and 4 are sustained in part. Claimant shall be allowed pay for 64 hours at the crossing watchman straight time rate.



PETER R. MEYERS
Neutral Member



D. D. Bartholomay
Organization Member



E. N. Jacobs, Jr.
Carrier Member

Issued at Chicago, IL on January 27, 1998