

PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 6
CASE NO. 6

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) VS.
DISPUTE) FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT
OF CLAIM:

1. That the Carrier violated the Agreement when they failed to call the following nine (9) Section Laborers for overtime, Friday, June 20, 1980,

<u>Name</u>	<u>Seniority</u>	<u>Date</u>
E. Howland	1-17-51	
H. B. Young	7-1-70	
E. Young	7-8-70	
J. E. White	5-17-76	
J. Thweatt	9-13-76	
R. Downs	2-6-78	
S. W. O'Neal	6-19-78	
J. E. Person	5-8-79	
J. L. Mosley	8-6-79	

and, in lieu thereof, called eighteen (18) section laborers. all but five (5) of whom have acquired less seniority than the junior laborers who were not called.

2. That the Carrier shall compensate the above named section laborers for pay at their respective time and one-half rates for four (4) hours and thirty (30) minutes account this violation.

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.


This case presents a strictly limited factual issue: Did the Foreman, when the emergency derailment occurred early in the morning of June 20, 1980 call the nine claimants "in seniority order, letting the phone ring in each instance five or more times" and "when there was no answer" then call the next man, as set forth in Carrier's letter dated March 24, 1981, denying the claim following conference on March 12, 1981.


The factual issue, it is noted from the evidence of record, arose March 12, 1981, some nine (9) months after the incident of June 20, 1980. The record contains no corroboration of the Foreman's allegation that he had telephoned the claimants. In view of the passage of time and absence of corroboration, in the circumstances of this case, the evidence is not sufficient to support the Foreman's allegation.

A W A R D

1. The Carrier is in violation of the Agreement.
2. Based upon the peculiar facts and circumstances in this particular case, and based upon the strictly limited and narrow issue of fact presented, the claim is sustained.


JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER


S. E. FLEMING, EMPLOYEE MEMBER


B. J. MASON, CARRIER MEMBER

DATED: Dec. 16, 1981