

Public Law Board No. 2630

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees

and

The Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

1. Carrier violated Agreement of October 1, 1968, particularly Rule 24, when it called for overtime and worked Michael Bucklew, Junior Trackman, on January 20, 1978, 5 p.m. until 7 a.m. and on January 21, 1978, 4 p.m. until 7 a.m. at Cumberland, Maryland, Yard.

2. Charles E. Waybright, Trackman, being senior qualified and available on January 20 and 21, 1978, should be properly compensated for 29 hours at the appropriate Trackman rate.

FINDINGS:

Petitioner's position is that Carrier breached Rule 24 when it used Michael Bucklew to perform overtime service in Cumberland Yard while claimant was furloughed and at home available for such service.

It is undisputed that claimant was senior to Mr. Bucklew in point of service. He should, therefore, have been called for the work in question, clearing snow from switches, in the absence of an emergency.

Carrier has not shown that an emergency existed at the time. The mere fact that there was an accumulation of snow does not, in the absence of further particulars, prove that it was necessary to call a junior employee while claimant was on furlough.

However, Carrier has presented evidence -- a statement by Assistant Track Supervisor McAllister -- that Mr. McAllister tried twice, at 4:20 and 4:45 p.m. on January 20, to reach claimant by telephone but that on each occasion, the line was busy. Accordingly, Mr. McAllister maintains, he then proceeded to call the next man on the roster. Claimant insists that he was not called although he was at home and available.

This Board does not have occasion to observe and hear witnesses and is not in a position to resolve questions of credibility. Under the circumstances, we have no alternative but to deny the claim in line with Third Division Awards 21423 and 20408. There is no basis for not crediting Mr. McAllister or for holding that he was under the obligation to notify claimant by a personal visit to his home. Mr. McAllister's statement is quite specific and made on the basis of his own knowledge.

AWARD: Claim denied.

Adopted at Baltimore, Maryland, *August 15,* 1981.

Harold M. Weston

Harold M. Weston, Chairman

M. K. Corning

Carrier Member

J. E. LaRue

Employee Member