

Award No. 12
Case No. 76

Public Law Board No. 2778

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

Claim on behalf of Richard E. Simmons for 7½ hours at time and one-half rate for Sunday, May 7, 1978, account junior employe Glen Brooks working at derailment in Wilsmere Yard on said date.

FINDINGS:

An employe junior to claimant was used to perform repair service at Wilsmere Yard on May 6 and 7, 1978.

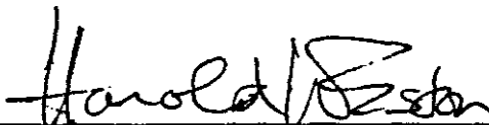
Foreman Tansley maintains that he did try to call claimant by telephone for the work on May 7, but that his efforts met without success. Claimant denies that the call was made.

The burden of proof rests with Petitioner and we are not in a position, as an appellate board, to resolve questions of credibility where, as here, no persuasive ground is disclosed by the record for rejecting the foreman's statement and we have no opportunity to observe the witnesses' demeanor.

AWARD:

Claim denied.

Adopted at Baltimore, Maryland, February 2, 1983.



Harold M. Weston, Chairman


Carrier Member


Employee Member