

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 38

Case No. 38

STATEMENT OF CLAIM

1. The Carrier violated the provisions of the current Agreement when on July 21 and 22, 1990 the Carrier failed to call and assign overtime work to Messrs. J. A. Samabrano and C. J. Ortiz, instead chose to call junior employees to perform such overtime work.

2. The Carrier will now be required to compensate each Claimant at their respective rate of pay, equal to that of thirty-one (31) hours of overtime.

F I N D I N G S

On July 21, 1990, a derailment occurred. and employees were called for overtime assignment in connection therewith. Employees junior to the Claimants were called, and the Organization states the Claimants should have been called under Rule 21 (d), which states in pertinent part as follows:

Senior employees in their respective ranks and gangs will, if available, be called or used to perform overtime work.

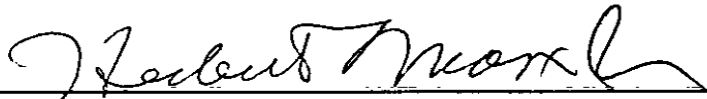
The Carrier contends that the Claimants were not called simply because their telephone numbers were not on file, and they were not listed in the local telephone directory. (Both Claimants live in outlying communities.) The Claimants insist that their numbers were available.

Neither the Claimants nor the Carrier can clearly demonstrate the validity of their assertions. It appears that, shortly after the claim was initiated, steps were taken to insure that a complete list of telephone numbers became available. A repetition of this controversy is thus avoidable.

There is no showing that there was any deliberate failure to call the Claimants in favor of junior employees. Given the conflict in factual assertions, the Board is unable to assign responsibility or resolve the matter.

A W A R D

Claim dismissed.

A handwritten signature in cursive script, reading "Herbert Marx, Jr.", is written over a horizontal line.

HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: October 30, 1992