

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4370

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 39

Case No. 39

STATEMENT OF CLAIM

1. The Carrier violated the provisions of the current agreement when, on August 18, 19, 1990, it failed to call Section Foreman Mr. Charles Lamorie and fellow workers Messrs. David Rivera, Fred Sanchez, Fred Aranda, and Leon Guttierrez.

2. The Carrier shall now be required to compensate each Claimant at their respective overtime rate in the amount equal to eighteen hours overtime.

FINDINGS

On August 18, 1990, a derailment occurred. and employes were called for overtime assignment in connection therewith. Employes 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 employes in their respective ranks and gangs will, if available, be called or used to perform overtime work.

Except in one respect, this Claim is identical to that reviewed in Award No. 38. Whether or not the Claimants (other than the Foreman) had provided the Carrier with their telephone numbers is not clearly established. The parties subsequently remedied the situation by undertaking to provide and receive telephone numbers of all employees. Under this situation, further remedy is not appropriate.

As to the Foreman, he was on vacation in the week in which the Saturday-Sunday derailment occurred. The Carrier asserts that he had been contacted on Friday on another matter and had said "not to bother him on his vacation". It is reasonable to assume that the rest days following the work days of an employee's vacation are part of the vacation period and that the employee is not available for call. Third Division Award No. 29039 stated:

Carrier has taken the position that an employee's vacation extends through the two rest days after the vacation period and consequently has not disturbed employees for work on these days. The Board agrees with Carrier in this regard.

A conclusion indential to that in Award No. 38 is warranted.

A W A R D

Claim denied as to the Foreman. Claim dismissed as to the other employees.



HERBERT L. MARX, Jr., Neutral Referee

NEW YORK, NY

DATED: October 30, 1990