

AWARD NO. 6
CASE NO. 6

PUBLIC LAW BOARD NO. 4604

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**
TO)
DISPUTE) **CSX TRANSPORTATION, INC.**

STATEMENT OF CLAIM

Claimant D. R. Slusher, ID 187208, be paid 8 hours straight time, 8 hours overtime and 10 hours double time at track repairman's rate of pay for September 22 and 23, 1987.

OPINION OF BOARD

Although Claimant is senior to F. L. Jones, on September 22, 1987 Jones was called over Claimant to work a derailment. Claimant asserts that he was home and available on September 22, 1987 but was not called. The Organization has also submitted a statement from Claimant's wife stating that "my husband ... was home on the September 22, 1987." The Carrier relies upon its December 30, 1987 declination letter which states "be advised that D. R. Slusher was called by Roadmaster R. M. Wynn on September 22, 1987 and was unable to be contacted for work" and upon its March 9, 1988 declination which states "The results of our investigation into your claim reveal that Claimant was called by Roadmaster R. M. Wynn on September 22, 1987, in regard to the work made subject to your claim; however, he was unable to contact Claimant."

Rule 30(b) states, in pertinent part:

A reasonable effort must be made to contact the senior employe so registered, before proceeding to the next employe on the register"

The question in this case is whether the Organization has demonstrated that a reasonable effort was not made to contract Claimant. Based upon the evidence in this record, we find that the Organization has satisfied its burden and the Carrier has failed to sufficiently rebut that showing.

In similar cases, the Organization's position has been upheld. See Third Division Award 16473:

This is a claim wherein an employee junior to the Claimant was used to perform overtime service. Petitioner has alleged a violation of Rule 45(d) of the Agreement. This rule simply states that in situations such as the one confronting us here, the senior man will be called.

The evidence of record indicates that the Foreman did telephone Claimant for the work involved, but having received no answer, then called the next man on the list. Claimant has submitted his own statement and his wife's statement to the effect that he was home when the call allegedly was made, but did not hear the telephone ring. Hence, we have conflicting statements from the Foreman and Claimant. The Foreman has stated that he called only once. We do not think that this constitutes a reasonable effort on his part to satisfy the requirements of the cited rule.

See also Third Division Award 16334, where the Board held that "Carrier's attempt to call Claimant only once can hardly be held to be a 'reasonable effort' to contact him as is required by Rule 30(b)."

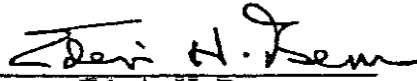
The Carrier's argument in this case is based upon the above-cited declination letters. Aside from the general statements in those letters, we can find no statement in this record from Roadmaster Wynn nor is there any other evidence detailing the circumstances under which the contact was attempted sufficient to rebut the Organization's showing that Claimant was home and did not receive a call.

We recognize that this case involved an emergency. However, without more from the Carrier concerning the details of its attempt, and further considering the above awards, under the circumstances we cannot say that the Carrier made a reasonable effort on the date in question as required by Rule 30(b).


In light of the above, it is unnecessary to address the Organization's arguments that the Carrier did not respond to the claim in a timely fashion.

AWARD

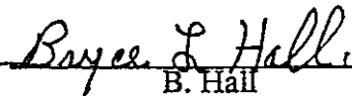
Claim sustained.



Edwin H. Benn
Neutral Member



L. Womble
Carrier Member



B. Hall
Organization Member

Jacksonville, Florida
February 24, 1989