

AWARD NO. 110
CASE NO. 154

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES) Brotherhood of Maintenance of Way Employees
)
TO)
)
DISPUTE) St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

"Claim in favor of Track Inspector H.A. Stephenson and Assistant Track Inspector C.V. Burchfield for seven hours at time and one-half rate for October 11, 1970, account allegedly not being called to patrol track between Commerce and Plano, Texas."

FINDINGS

Because of heavy rains near Commerce and Plano on Saturday and Sunday, October 10 and 11, 1970, Carrier determined it was necessary to patrol track between Plano and Commerce. The Roadmaster, according to a later statement in connection with this claim, stated that he had called Claimant Stephenson at his home but there was no answer, and further stated that he did not call Claimant Burchfield because he "understood" that Claimant Burchfield was away from home visiting that weekend. Other employees were called to do the work.

In its submission before this Board, Carrier asserts:

"[W]hile it is Carrier's position that there is nothing in the Memorandum of Agreement, nor any rule in the schedule agreement, that reserves exclusively to track inspectors and assistant track inspectors the work patrolling track, as outlined, later herein, Carrier submits that the claimants in this case were not available to perform the service and obviously claim in their favor could not be valid under any circumstance."

As far as can be determined from the record before the Board,

the defense of non-exclusivity was not raised by Carrier during the handling on the property, and shall not be considered by this Board.

Claimants Stephenson and Burchfield both contend, in written statements, that they were at home over the weekend and available for duty.

With respect to Claimant Burchfield, it is clear that his claim should be sustained. Second or third hand surmise did not justify the Roadmaster not to attempt a call.

With respect to Claimant Stephenson, resolution of the question is more difficult. The Claimant states that he was at home and did not receive a call; the Roadmaster claims that he called Claimant at home and there was no answer. Awards of the National Railroad Adjustment Board have gone both ways. This Board is of the opinion that the better reasoned view is that when Carrier relies on a defense of having made the call and there was no answer, a mere assertion that a call was made without answer is insufficient to satisfy the evidentiary burden. More is required. For example: at what time was the call made, was there an attempt to call again, was there verification that the number was correct and the telephone in working order. This is not to say that Carrier must do all of these things before it meets its burden. It is to say that an assertion that a call was made and there was no answer is not enough.

AWARD

Claims sustained. Carrier is ordered to make payment within 30 days of this award.

M. Kumar
Neutral Member

M. L. Erwin
Carrier Member

A. Cunningham
Organization Member

Date March 18, 1977