

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20534
Docket Number MW-20455

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Houston Belt and Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The **Agreement** was violated **when** Section Foreman J. M. Sanchez was not called to perform overtime service on **his** assigned section territory (Section **#1**) **on** July 1 and 2, 1972 and the Carrier instead called and used For- I. Gonzales for such **Service** (System **File** 601.534).

(2) Section **Foreman** J. M. Sanchez be allowed sixteen (16) hours of pay at his time and one-half rate, two (2) hours of pay at his double time rate and six (6) hours of pay at his one-half time rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: Claimant was the regularly assigned Foreman **on** Section **#1, with** a Monday through Friday work week. On Saturday, July 1, 1972, a derailment occurred. Although Gang #1 laborers were called to clear the derailment, a Section **#2** For- (Gonzales) worked eighteen (**18**) hours of overtime. Claimant asserts that, **under the Rules** Agreement, he was entitled to said overtime work.

Carrier does not dispute that Claimant had the initial right to the overtime work, but it claims that he did not **answer** his phone when he was called on July 1, 1972. Claimant insists that he was **home** and that the phone did not ring.

Upon a review of the entire record, the Board concludes that the sole issue is whether Carrier took reasonable steps to contact Claimant on July **1**, 1972.

Carrier states in its Submission and in its Rebuttal to this Board, that Supervisor Gross attempted repeatedly to contact Claimant. But the Organization points out that the record contains no statement from Gross concerning his attempt to contact Claimant: Rather, the record contains hearsay statements from others.

This Board has repeatedly held that it must **confine** its review to matters raised and considered on the property. In that regard, we note Carrier's assertion that Gross:

"...**attempted** to **contace** Mr. Sanchez between **2:30** and 3:00 p.m....."

However, the record, as compiled on the property, fails to disclose if Gross attempted to contact Claimant **on** a number of occasions between **2:30** and **3:00**, or if he made one call during that period before he called Gonzales. The record does indicate that Gonzales reported to work at **3:00** p.m., however, we are not advised as to the time he received the call to report for work, and we must presume that Gross ceased attempting to contact Claimant after he advised Gonzales to report for duty.

In Award 17182 (Dugan), the Board noted:

"A call could have gone wrong for a multitude of reasons, including a bad connection, a misdialed number, failing to reach an outside Line if called through a switchboard, not awaiting a dial tone, repairs on the **line** or the use of a faulty piece of equipment. **Therefor** we are of the conclusion, that instead of permitting the telephone to ring approximately 20 times (although we are not **condemning** Carrier's **supervisor** in this instance for doing this) we feel that another phone call to Claimant was warranted inasmuch as there wasn't an 'Emergency' as such involved herein wherein such another call to Claimant could not have been **made....See** Award 13474 (McGovern)."

Award 19658 (**Blackwell**) considered a dispute between these parties. **That** Award held:

"The individual who called claimant on February 5 allowed the phone to ring several times and then called another section for-. The caller should have redialed the phone number at Least a second time to provide greater assurance that the proper number was being dialed."

See also Awards 16279 (**Zack**), 18425 (Franden), 18870 (**Franden**), 20109 (**Eischen**)and Second Division Award 6682 (**Yagoda**).

Carrier has relied upon denial Award 20408 (Edgett). However, Carrier in that dispute attempted to contact the employee "several times."

The above cited Awards have demonstrated that one phone call is not sufficient. Award 19658, concerning this same Carrier, held that at least one **redial** was required. Without regard to the fact that the record contains no statement from Gross, the documents considered on the property fail to **indicate** that more than one call was made. Consequently, we will sustain the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employes** involved in this dispute are respectively Carrier and **Employes** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD **ADJUSTMENT** BOARD

By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 22nd day of **November** 1974.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 20534

Docket No. **MW-20455**

NAME OF ORGANIZATION: Brotherhood of Maintenance of Way Employees

NAME OF CARRIER: Houston Belt and Terminal Railway Company

Upon application of the representatives of the Carrier involved in the above Award that this Division interpret the **same** in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

Carrier requests an interpretation of that part of Award 20534 dealing with Part (2) of the claim as follows:

"..and six (6) hours pay at his one-half time rate because of violation referred to in Part (1) hereof."

This Board has no authority to alter, change or modify the extent of an Award under the cloak of an interpretation thereto. Rather, the Board is limited to interpreting an Award in light of the circumstances that existed when the Award was rendered.

In its initial claim as presented on the property, the **Organization** specified the extent of its claim and, in fact, appraised the Carrier of the basis for the claim. At no time, while the matter was under consideration on the property, did the Carrier challenge the basis for the claim, or make any inquiry seeking clarification. Similarly, the Carrier's Submission and **Rebuttal** were silent on the matter.

The Board sustained the claim as it was handled on the property and presented to the Board. The Award is clear **and** it is not ambiguous. Thus, the question raised by Carrier in its request to us is not subject to interpretation.

Referee Joseph A. Sickles, who sat with the Division as a Neutral Member when Award No. 20534 was adopted, also participated with the Division in considering the application for interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:



Executive Secretary

Dated at Chicago, Illinois, this **21st** day of February 1975.