

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26200
Docket Number MW-26254

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Emploes**
(Consolidated **Rail** Corporation

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

(1) The Carrier violated the **Agreement** when it assigned **B&B** Mechanic M. E. **Campbell** to perform overtime service on June 24 and 25, 1983, instead of calling and using **B&B** Mechanic J. R. Johnston who was senior, available and willing to perform that service (System **Docket CR-534**).

(2) **B&B** Mechanic J. R. Johnston shall be **allowed** thirteen (13) hours of pay at his time and one-half rate because of **the** violation referred to in Part (1) hereof."

OPINION OF BOARD: On June 24 and 25, 1983, **overtime** service by a Bridge and Building Mechanic was required at a derailment in Pittsburgh, Pennsylvania. Carrier used a junior Mechanic instead of Claimant. Claimant alleges that as the senior **employee**, he should have been called and therefore should be **compensated** for the thirteen hours at the time and **one-half** rate for this **Agreement** violation.

The Organization argues that Claimant was fully qualified and available to **perform** the service. No calls **from** Carrier were received at Claimant's **home**. Written statements **from** Claimant, his wife, and his mother **supported** that fact. Even if Carrier **made** one call, that **does** not constitute a reasonable effort to contact him. **The Track** Foreman instead called his son, which the Organization believes is highly suspicious.

Carrier points out that it was faced with an emergency: a train had derailed **and** was blocking Pitt Interlocking. **The Track** Foreman was told to have his **men** report for duty. **The Track** Foreman called Claimant, but there was no response. He had no time to make repeated calls and therefore called **someone else**. Contained in the record are statements **from** Claimant **and** his family attesting they were **home** at the time of the alleged call and the phone did not **ring**. **We** also have a statement **from** the **Track Foreman** attesting that he called Claimant **between 11:00 and 11:15 P.M.** and received no answer.

As noted in **Third** Division Award 21436: "**This Board** has no way of resolving an irreconcilable dispute on facts. **We** have been faced with such situations many times and have held consistently that under such circumstances the Claim **must** either be denied or dismissed."

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 **Employees** involved in this dispute are respectively Carrier and **Employees** 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 facts are in dispute.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 12th day of December 1986.