

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26291  
Docket Number MW-25991

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of **Way Employees**  
(The Chesapeake and Ohio Railway Company  
(Northern Region)

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

(1) The Carrier violated the Agreement when it failed to recall **Trackman** K. C. Alberts to service on April 5, 1963 (System File **C-TC-1871/MG-4126**).

(2) Because of the aforesaid violation, **Trackman** K. C. Alberts shall be allowed ninety-six (96) hours of pay at his straight time rate for the period April 5 through April 20, 1963."

OPINION OF BOARD The Claim herein involves the alleged failure of Carrier to recall Claimant in accordance with his seniority while recalling less senior employees. The Board, after careful examination of the entire record of this **dispute**, finds that it is unable to deal with the substantive issues raised; this, because of some fundamental conflicts with respect to the pertinent facts. Petitioner alleges that less senior employees were recalled prior to **Claimant**, while Carrier asserts that this was not the case. Based on the record, this Board has no possible way of knowing which version of the facts is correct and hence can make no determination with respect to the merits; the Claim must be 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;

That there **is** a conflict in the facts.

Award Number 26291  
Docket Number MW-25991

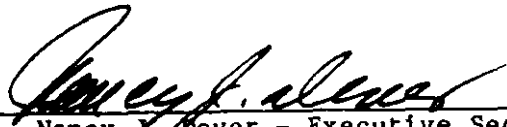
Page 2

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 24th day of April 1987.