

Referee Robert M. O'Brien

PARTIES Railroad Yardmasters of America  
TO  
DISPUTE: Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Yardmaster J. O. Lindsay be allowed one day's pay at the appropriate yardmaster time and one-half rate for September 17, 1970, 10:30 PM to 6:30 AM account not called for vacancy on his rest day and Spanier used to work two shifts on the calendar day.

OPINION OF BOARD: On September 17, 1970 Yardmaster Spanier was used to fill a vacancy at 6:30 A.M. and again at 10:30 P.M. the same day. It is Petitioner's contention that claimant was on his assigned rest day this date and should have been used on the 10:30 P.M. vacancy. They maintain that Carrier failed to make a reasonable attempt to contact claimant for the vacancy and that the record is devoid of evidence, other than an unsupported allegation, that an attempt was made to contact claimant on the telephone to apprise him of the vacancy.

Carrier counters by claiming that when the vacancy arose its Crew Dispatcher, W. Wilson, called claimant for the assignment but received no answer. And since there were no extra yardmasters available for call Yardmaster Spanier was used to fill the vacancy in accordance with past practice on this property.

It is undisputed that claimant was entitled to be called to protect the 10:30 P.M. vacancy. It is also beyond dispute that Carrier had the obligation to make a reasonable effort to contact claimant to apprise him of the vacancy. Carrier says it satisfied this burden when Crew Dispatcher Wilson telephone claimant but received no answer.

When Petitioner's General Chairman was informed of this attempt to call claimant the burden shifted to Petitioner to show that such attempt was not reasonable. However, the record is devoid of evidence which would indicate that claimant or other members of his household were at home on the date of the call. If claimant had shown this, the burden would rest upon Carrier to prove that it had made more than a minimal effort to contact the claimant. However, there is not even an allegation in the record that claimant or other members of his household were at home to receive the call on the date of claim. Absent this showing, we cannot conclude that Carrier failed to make a reasonable attempt to contact claimant. And since he could not be contacted, Carrier properly used Yardmaster Spanier to fill the vacancy.

Award No. 2859 of this Division is clearly distinguishable since claimant therein insisted that he was home the day Carrier claims it called him. Such was not the situation in the present claim and for the reasons above referred to the claim will be denied.

## FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The Carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
BY Order of Fourth Division

ATTEST: Executive Secretary  
National Railroad Adjustment Board

By *Rex J. Lewis*  
Assistant Executive Secretary

Dated at Chicago, Illinois, this 6th day of July, 1973.