

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONAward Number 3971
Docket Number 3903

Referee Robert E. Peterson

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Baltimore and Ohio Railroad Company

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

Substitute Yardmaster G. W. Bangert be paid one pro rata rate day for August 5, 1980 account carrier failed to use him for a yardmaster vacancy on same date when he was first out.

OPINION OF BOARD: The question at issue in this dispute revolves not around the undisputed fact that Claimant was entitled to cover a yardmaster vacancy as the employee standing next out on the Yardmaster's Extra List, but whether he was deprived of such vacancy by reason of his own actions in not being continuously available at his registered calling place, or whether he was misled or misinformed into believing there were no vacancies to be filled after making two personal telephone calls to Carrier's offices relative to such matter.

At about 9:15 P.M. on the date in question Claimant called the Crew Dispatcher's office to inquire as to yardmaster vacancies. After being told that there were none, he stated that he would call back again at 10:00 P.M. in the event of a late mark off by an employee. Ten minutes after this conversation, Carrier received notification that a regular assigned yardmaster was marking off his 11:00 P.M. assignment. No attempt was made at that time to reach the Claimant relative to the vacancy. Claimant again called the office at 10:00 P.M. At this time, the clerk with whom he had spoken with earlier was reportedly not present, and Claimant inquired of another clerk as to whether anyone was looking for him to work as yardmaster. Regardless of the Carrier's unsubstantiated statement that this clerk was not responsible for filling yardmaster vacancies, the fact remains he responded to Claimant's inquiry by giving him a "no" to his question. Approximately ten minutes later the first clerk attempted to contact Claimant at his residence, but was unable to do so. Thereafter, the clerk contacted another extra yardmaster and instructed him to fill the vacancy.

Basically, it is the Carrier's position that the Organization has failed to show that Carrier violated any provision of the Agreement as a result of its handling of the yardmaster vacancy. It submits that as an extra yardmaster Claimant is

obligated to protect all yardmaster vacancies and the fact that he made attempts to determine the existence of a yardmaster vacancy did not relieve him of his obligation to protect or remain available at his residence for any calls. It maintains that when Claimant left his residence he voluntarily forfeited any opportunity he had to perform service as a yardmaster, since the actual time and method utilized to call an extra employee is the Carrier's prerogative and not that of an individual employee as it asserts the Organization suggests.

Under the facts here shown in this particular dispute, we think the real basis for Claimant's unavailability stems in major part from a circumstance created by the Crew Dispatcher's office. We think there was negligence on the part of that office not to have properly advised Claimant that there was a vacancy at the time he made his second call, particularly since it is evident that almost immediately after he had called they decided to then make calls to fill the vacancy. This is not a situation whereby an employee standing for work was trying to circumvent his availability. He made reasonable attempts to remain in contact with the office and there is no showing in the record that he had been told not to call the office relative to yardmaster vacancies, but to just stay available at his residence or leave a telephone number where he could be reached in the event of a vacancy. Therefore, we believe he was misled and misinformed by the Carrier to his detriment and will find that the Carrier is obliged to allow the claim.

The Board's findings in this claim should not be interpreted as removing from those persons on the extra list the primary obligation or responsibility to keep themselves available for call at their stated calling places. The claim in the instant dispute is sustained solely on the facts of record as related to the manner by which Carrier contributed to the Claimant's unavailability.

FINDINGS:

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

The Carrier and the Employes 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.

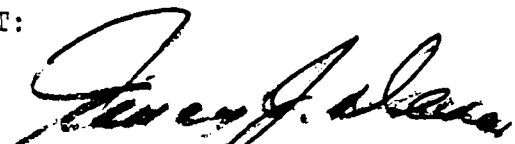
The parties to said dispute were given due notice of hearing thereon.
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:


Nancy J. Bever
Acting Executive Secretary

Dated at Chicago, Illinois, this 17th day of March 1983.