PUBLIC LAW BOARD NO. 4093

Parties to Dispute:

United Transportation Union - Yardmasters Department	)	Case No. 7
vs	)	Award No. 7
Chesapeake and Ohio Railway Company	)	

STATEMENT OF CLAIM:

Yardmaster F. D. Meadows claiming one day's pay for September 25, 1983 which was deducted from his guarantee on authority of Mr. H. M. DeVries, Terminal Trainmaster.

OPINION OF THE BOARD

Claimant F. D. Meadows was a regularly assigned Yardmaster working under the terms of the Master Coordination Agreement of June 1, 1982 and was entitled to dismissal allowance. He held position on the list of Extra Yardmasters who under the Yardmasters' Agreement were subject to Rule 5(a). That Rule states:

> "Extra yardmasters will respond for all reasonable calls for extra work. Extra yardmasters missing calls or declining calls for yardmaster work for any reason will not again be used within twenty-four (24) hours from the time they would have begun work on the missed or declined call if other extra yardmasters are available."

On September 25, 1983, the second trick Yardmaster had a heart attack after reporting for work and the Claimant was called as per the above cited Rule, but could not be contacted. The dispute in the instant case was brought by the Organization because of two

issues. First, the Organization argues that Rule 5(a) was violated in that the call was made well after the shift began and that such was not "reasonable" within the meaning of the Rule. Further calls were made to two other Yardmasters who along with Claimant lost one days pay each for being unavailable. Second, the Organization maintains that the Claimant left two numbers and the Carrier only called the first number. It holds that the Claimant complied with past practice on the property in regard to Rule P of the Operating Rules. Rule P states that "employees subject to call, must not absent themselves from their usual calling place without notice to those required to call them."

During the progression of this claim on the property the Carrier did not dispute the fact that a second number was given by the Claimant. However, the Carrier argued that any call to the second number was "an extension of courtesy" since the employee must advise the Carrier "of the new place where he can be contacted." The Carrier's Senior Manager of Labor Relations maintained that in fact, phone calls were made to both numbers. As for the Organization's argument that Carrier's action was not "reasonable" within Rule 5(a), the Carrier maintained that there was no Agreement provision specifying the time that an employee must be called for service.

This Board has carefully reviewed the entire record. The Organization must prove its case with probative evidence. Herein, it must establish that the Carrier failed to call the Claimant or that the Carrier's actions violated the Agreement.

With respect to the telephone call(s), the record is disputed. The Organization argues that the Carrier failed to call the second number as was practice on the property. The Carrier does not deny that a second call was past practice. The declination of January 6, 1984 by the Division Manager states that the "Assistant General Yardmaster on duty called the appropriate numbers in order to fill the vacancy." The "numbers" (emphasis

added) referred to is unclear and may not have been the two numbers listed by the Claimant. Mr. Comisky, Senior Manager Labor Relations, states that the Claimant was called at the second number. There is no probative evidence in the record as presented by the Organization that the Claimant was at the second number and failed to get a call. As such, the record does not contain the necessary evidence to establish that the Carrier only called the first number or failed to call the Claimant at all.

The second issue herein is the interpretation of Rule 5(a) with regard to "all reasonable calls". There is no Agreement provision in the record that specifies the time frame for Carrier in the calling to service of Extra Yardmasters, as in the case at bar. Although this was a missed call, under these emergency conditions should the employee have been expected to be available at 5:00 PM when the second trick position began at 3:58 PM? The Organization maintains an Agreement violation in that such is not "reasonable."

Our review of Rule 5(a) is that it restrains the Carrier to "reasonable calls for extra work." In the facts and circumstances at bar the Carrier's action took place because of an emergency wherein an employee suffered a heart attack. In addition, such action took place an hour after the shift began. The Carrier notes that Claimant would have been paid for the entire tour of duty for working any part of it. While the Organization suggests that Carrier should be restricted to a time frame of three (3) hours prior to the starting time of the position as required when "marking up", such restrictions do not contractually exist in these circumstances. What constitutes "reasonable" action must be considered upon the specific facts of each case.

Our view of the record is that the Organization has failed to show any Agreement provision that restricts the Carrier from the action complained of herein. Nor has it provided any proof of unreasonable action on the part of the Carrier. There is no probative evidence that the Claimant was available and not

called at both phone numbers. As such, the evidence of record fails to meet the Organization's burden of proof. Therefore, we find in the instant circumstances that the Carrier violated no provision of the Agreement and the case must be denied.

FINDINGS

Public Law Board No. 4093 upon the whole record and all the evidence finds that:

The Carrier and the Employee involved in this dispute are respectfully Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

That the Agreement has not been violated.

AWARD

Claim denied.

Marty E. Zusman

Marty E. Zusman, Chairman
Neutral Member

R. L. McAtee

Mr. R. L. McAtee
Employee Member

E. R. Norton

Mr. E. R. Norton
Carrier Member

Date: 9/20/87.