

BEFORE PUBLIC LAW BOARD NO. 6076

UNITED TRANSPORTATION UNION - YARDMASTERS DEPARTMENT

and

CSX TRANSPORTATION

Case No. 10

STATEMENT OF CLAIM:

Claim for one day at the yardmaster punitive rate of pay for regular Yardmaster M. J. Marques of Baltimore for the second trick Yardmaster position at Curtis Bay on August 23, 1998, account of the Carrier using a junior Yardmaster at the punitive rate. This is in violation of the schedule Agreement, Articles 3B, 10F and 17. (Run around)

FINDINGS

On August 25, 1998, the Organization filed the instant claim contending that the Carrier violated the Agreement, in particular Articles 3B, 10F, and 17, when it called in junior yardmaster ^WMiller at the punitive rate to fill in a vacancy. The Organization argues that the Claimant was the senior yardmaster and should have been the one called in for duty. Furthermore, the Organization contends that the Claimant was available and willing to work.

The Carrier denied the claim contending that its records indicate that the Claimant was called on August 23, 1998. However, since there was no answer at the Claimant's residence, a message was left on his answering machine at 12:45 on said date. The Carrier contends that the Claimant never returned the call.

The parties being unable to resolve the issue, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has met its burden of proof that the Claimant was improperly denied the right to work the second trick yardmaster position at Curtis Bay on August 23, 1998. The record reveals that a junior yardmaster was utilized by the Carrier in violation of the agreement.

The Carrier's position is that it left a message on the Claimant's answering machine and that he never responded. The Claimant and his wife both contend that no message was ever found on the answering device.

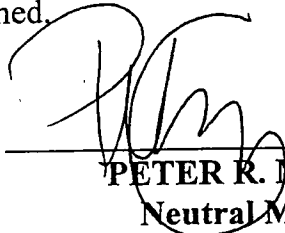
This issue has been reviewed on numerous occasions in the past, with the lead case being Award No. 4064 from the Fourth Division of the National Railroad Adjustment Board. In that case, the Board held that a single call is not sufficient. The Board suggested it may be appropriate for the Carrier to try the number "at least once more to check if the correct number had been dialed or if the call had been properly completed."

Citing Third Division Award No. 23561 and Fourth Division Award No. 2929, the Fourth Division sustained the claim in Award No. 4064, pointing out that the Carrier should have and could have made more of an effort to contact the Claimant to inform the Claimant that he or she should report for work. In Award No. 23561, the Board held "one call in such a situation falls short of any reasonable definition of sufficient effort."

In this case, the Carrier has once again stated that it only made a single call to the Claimant's voice answering machine. A second call should have been made so that the Claimant's rights were protected. It was not made; and therefore, in line with the earlier cases, this claim must be sustained.

AWARD:

The claim is sustained.




PETER R. MEYERS
Neutral Member



CARRIER MEMBER

Dated: September 22, 1999



ORGANIZATION MEMBER

Dated: September 22, 1999