

PUBLIC LAW BOARD NO. 1305

United Transportation Union)
General Committee of Adjustment - Enginemen)
vs.) Parties to Dispute
The Baltimore and Ohio Railroad Company)

AWARD

STATEMENT OF CLAIM:

Claim of Engineer J. P. Kopp, I.D. #1082898
and Fireman J. F. Heekin, I.D. #1079918, for
one day account not being notified that their
job was laid in on May 27, 1974.

STATEMENT OF FACTS:

As of Monday, May 27, 1974, Memorial Day,
Claimant Engineer J. P. Kopp and Claimant Fireman J. F. Heekin,
holding Toledo Division seniority, were assigned to the 7:25 a.m.
Yard Two job at Cincinnati Terminal, Cincinnati. The assigned ground
crew members on this turn were Yard Foreman J. L. Halpin and Yard
Helpers S. J. Warren and P. J. Ritter.

Memorandum of conference July 15, 1974, between
Terminal Superintendent D. C. Eubank and Local Chairman, H. Cheek, Jr.,
is as follows:

"Committee's Statement of Facts:

"On this date the two claimants reported for
duty at the proper time and place, as did the other
members of the crew, after calling the yardmaster at
Storrs they were advised that their job was laying in
that date. None of the crew was advised of this and no
bulletin was posted."

"Superintendent's Statement of Facts:

"May 27, 1974, Memorial Day holiday, a number of
yard assignments were laid in for one day.

"Bulletin was issued May 21, 1974 listing the jobs
that would be annulled over the holiday period, including
the two Yard Two jobs. Copies of bulletin were mailed to the
yard offices at Yard Two and Gest Street from Trainmaster's
Office.

"The crew dispatcher does not notify each individual personally of the annulments, which is reason for the bulletin so this is not necessary."

FINDINGS:

There is a direct statement of material fact in that the Committee asserts none of the crew was advised of the laying in of job that date and no bulletin was posted.

The Carrier states that the bulletin was issued May 21 and copies were mailed to the yard offices. The memorandum does not state as a fact that the bulletin was in fact posted.

This seems to raise a doubt as to whether there may have been an inadvertant failure to post the bulletin, even though mailed to yard offices.

In its submission the Carrier does make the statement that the bulletin had in fact been posted at the appropriate location in Cincinnati Terminal.

A conflict of material fact has thus been developed which in some cases might be cause for dismissal; however, the Board believes this conflict can be resolved with reasonable finality upon the record.

The Board finds first that had the bulletin been so posted on or shortly after Tuesday, May 21, that under the rules and past practice that would have defeated this claim.

The other aspect of the case is that the entire crew reported for duty on this assignment. It is difficult for the Board to believe that in the light of past history of cancelling this particular run on Memorial Day that all members of the crew would have missed the bulletin if properly posted.

The failure of the Carrier to produce supporting evidence, as for example, statement of the employee who allegedly posted the notice; and to supply some information as to time, place, manner, etc. requires the Board to rely upon the more direct evidence that no notice was, in fact, posted.

AWARD:

Claim sustained.
Carrier is ordered to make this award effective
within thirty days.



Leverett Edwards, Chairman & Neutral Member



T. W. Keating, Organization Member



C. J. Schuler, Carrier Member

Baltimore, Maryland

Dated: 8-1-79