

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13483

Docket No. 13374

00-2-98-2-63

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Brotherhood of Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE:

(Delaware & Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Delaware and Hudson Railway Company violated the terms of our current Agreement, in particular Rule 9 when they arbitrarily ordered Vacation Relief Carman Ronald Mesec to perform service on a non-vacation vacancy. Therefore, not properly compensating him for service rendered on July 28, 1997 and August 20, 1997.
2. That accordingly, the Delaware and Hudson Railway Company be ordered to properly compensate Carman Ronald Mesec for the difference between the straight time rate and the overtime rate as provided for in the above mentioned rule.”

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Parties to said dispute were given due notice of hearing thereon.

Claimant Carman Ron Mesec held a vacation relief assignment. Fellow Carman Howard Huto, who held a regular assignment, was scheduled for a five week vacation that was scheduled to start on July 28, 1997. In the early morning of July 24, 1997 Carman Howard Huto was killed in an on-the-job accident. Carman Huto's heirs were paid the five weeks of vacation accruing to him. Because Carmen Huto had died before his vacation began it is the position of Claimant that the five week assignment he was filling commencing July 28, 1997 was no longer a vacation assignment, but one that fell under Rule 9.

The Board observes, in studying the record, that prior to Carmen Huto's death he had been scheduled to be on vacation during the period from July 28, through August 20, 1997. As the owner of a vacation relief position the Claimant had also been scheduled to work the vacation period when Carmen Huto would have been, and was, absent and for which his heirs were paid.

Did Carmen Huto's five week vacation turn into a non-vacation vacancy by reason of his death? The Organization argues that this was the case. Was there a violation by the Carrier, therefore, of Rule 9.1 of the Agreement when it did not pay the Claimant properly for filling what the Claimant alleges was a non-vacation assignment?

Rule 9.1 reads, in pertinent part, as follows:

"Employees changing from one shift to another and commencing work within 24 hours of the original starting time, will be paid overtime rates for the first shift at each change. Employees working 2 shifts or more on a new shift shall be considered transferred. This will not, however, involve the payment of punitive overtime rates to employees changing off where employees work alternately on stated shifts, to employees changing positions under the exercise of their seniority rights, nor to employees in regular relief service."

There is no evidence that the Claimant ever held, or was assigned, during the time-frame in question, other than a vacation relief position. Carman Huto's death did not change the vacation period he had been scheduled to take, and to which the Claimant had been assigned. Carman Huto was paid on a weekly basis by the Carrier, which was

paid to his heirs, for the vacation period that the Claimant worked. Carman Huto would have been absent in either case during the vacation period that the Claimant worked.

The brunt of the Claimant's argument in this case rests on why Carmen Huto was absent during his scheduled vacation. Because Carmen Huto was dead instead of alive the Claimant reasons that he was filling a non-vacation assignment. Given the fact pattern of this case, such is simply incorrect. There was no violation by the Carrier of Rule 9.1 of the Agreement.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of January, 2000.