

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13533

Docket No. 13445

00-2-99-2-42

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

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

“That the Kansas City Southern Railway Company (hereinafter referred to as the “Carrier”) violated Rule 8 of the Controlling Agreement, effective April 1, 1980, as amended, between the Kansas City Southern Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) when it wrongfully bypassed P. E. Orender (hereinafter referred to as the “Claimant”) for eight hours of overtime March 9, 1998.

Accordingly, we request that for this violation, the Claimant be compensated for the eight hours pay at one and one-half his pro rata rate of pay.”

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.

This dispute is based upon the Carrier's failure to call the Claimant, who was first out on the overtime list, for a vacancy that commenced 12:00 midnight.

The Carrier's defense, on the merits was that the Claimant was scheduled to work the day shift at 8:00 A.M. on March 8, 1998. He called in sick. The Carrier accepted the Claimant's reason for not working and considered him unavailable for a day, i.e., a 24-hour day.

There are other arguments advanced by the Carrier in its defense. It argues an untimely filed claim and that the overtime list is not a strict seniority-based list but rather is a rotating type list. Significantly, the Claimant remained first out after March 9, 1998, and had the opportunity to work overtime at a later date.

Of and by itself, any one of the three defenses raised by the Carrier would have been sufficient to defend its position, but to the Board it is not necessary to go beyond the merits. The Claimant, after laying off sick for the 8:00 A.M. shift, was not considered available for the 12:00 midnight shift that night. The claim will be denied.

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 27th day of July, 2000.