

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22178
Docket Number CL-21799

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: claim of the System Committee of the Brotherhood,
GL-8187, that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it failed to call employe Noreen Griffin to perform service on Position No. 367 August 21, 1973, and, instead, used junior employe Y. Cavavarra thereon; and,

(b) The Southern Pacific Transportation Company shall now be required to allow Noreen Griffin eight (8) hours' additional compensation at the overtime rate of her guaranteed rate of pay August 21, 1973.

OPINION OF BOARD: In this case there was a brief vacancy created on Telephone Operator Position No. 367, assigned to work from 11:30 a.m. to 8 p.m., which was occasioned by the regularly assigned incumbent becoming ill and leaving work at 2:25 p.m., August 21, 1973. Carrier elected to "fill" the vacancy on an overtime basis.

2 Claimant, insofar as the record shows, was the senior qualified and available telephone operator. The Organization argues that when Carrier decided to fill the vacancy, Claimant should have been called and offered the work.

3 Carrier resists the claim on the grounds that no rule in the Agreement grants Claimant the contractual right to this assignment and also on the basis that Claimant was not available, since there had been attempts to call her three times without response.

This defense was later clarified in the Carrier's Submission which stated:

4 " . . . Carrier's General Superintendent of **Communications - System**, denied the claim based on claimant's unavailability when effort was made to **call** her for **overtime** service on another vacancy earlier in the day in question. **Claimant** however was never called for the overtime assignment involved in this instance. . . ."

5 **Based** on the facts and circumstances surrounding this claim and the admission above, the Board finds that **Carrier** believed Claimant had a right to be **called** for the assignment but did not make the call on the basis that it assumed she was not available. Clearly, assumptions of availability or unavailability are not sufficient. During the **handling** of the claim on the property Carrier offered to settle the dispute for pay of $3\frac{1}{2}$ hours, but that offer was rejected on the basis that Claimant could have worked five hours.

The Board finds the proper remedy in this case is to allow Claimant the time she could have worked had the Carrier not made the faulty assumption that she was not available. The **Board** will sustain **the claim** for five hours at the rate of time and one-half.

FINDINGS: **The Third** Division of the Adjustment Board, upon the whole record and **all** the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in **this** dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment **Board** has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

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Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of **Third** Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of **August** 1978.

