

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Award Number 22266**  
**Docket Number CL-21go5**

Don Hamilton, Referee

**(Brotherhood of Railway, Airline and  
( Steamship clerks, Freight Handlers,  
( Express and station Employees**  
**PARTIES TO DISPUTE: (**  
**(Fort Worth and Denver Railway Company**

**STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
m-8255, that:**

(1) Carrier violated the Agreement when it refused to allow Mr. W. R. Craven to work his regular assignment on August 20, 1975.

(2) Carrier shall now be required to compensate Mr. Craven eight (8) hours at the pro rata rate for August 20, 1975.

**OPINION OF BOARD: Claimant was the regular Second Trick Clerk-  
Operator. On the second day of his assigned rest  
days, he was called by the Carrier to protect the position of Sixth  
Clerk-Operator due to illness of the regular occupant. This assignment  
precluded the Claimant from protecting his own assignment because of  
the Hours of Service Law. Claimant was compensated at the punitive  
rate for the service performed on his rest day. This claim is for  
eight (8) hours' compensation for the regular assignment he was unable  
to protect.**

The Organization cites Rule 18 of the applicable Agreement,  
which provides as follows:

**"Regular assigned employees will receive one day's  
pay within each twenty-four hours, according to  
location occupied or to which entitled, if ready  
for service and not used, or if required on duty  
less than the required minimum number of hours as  
per location, except on their assigned rest days and  
the designated holidays. This rule shall not apply  
in case of reduction of force nor where traffic is  
interrupted or suspended by conditions not within  
the control of the Railway Company."**

The Carrier asserts that Rule 18 contains the provision  
that the employee must be "ready for service and not used." The Carrier  
argues that the Claimant was precluded from being available for his

regular assignment because of the operation of the Hours of Service Law and, therefore, he could not be considered "ready for service," as required by the Agreement.

The Union counters that It is not the Hours of Service Law which made him unavailable, but is, in fact, a direct result or the action of the Carrier.

The Union asserts that the Carrier maintains a skeleton work force and, therefore, must rely on working the senior available employee on his rest day.

In the instant case, the Claimant was called to protect the shift just prior to the expiration of his rest day and, therefore, he could not protect his regular assignment.

There are awards of this Board which hold that the Hours of Service Law prevails over the provisions of the labor Agreement.

The Carrier characterizes its position as one of "being in a box." It asserts that the Organization would file claims on behalf of the senior available man on his rest day if he were not called when the extra board was exhausted. On the other hand, if the senior available man was, in fact, called on his rest day and then was unavailable to protect his regular assignment because of the Hours of Service Law, he would file a claim for missing his regular assignment.

The parties have negotiated a specific guarantee rule. The Carrier elected to assign the Claimant in such a manner as to preclude him from protecting his regular assignment.

The action of the Carrier was the proximate cause of the Claimant being otherwise unable to comply with the requirements of Rule 18. To permit the Carrier to assign the Claimant in such a manner as to deny him the opportunity to be "ready for service," and then affirm that assignment as a defense to the payment of compensation, would be unreasonable.

The Carrier should compensate the Claimant eight (8) hours at the pro rate rate because it caused him to miss his regular assignment.

**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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1979.