

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25289
Docket Number CL-24972

I. M. **Lieberman**, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Maine Central Railroad Company
(Portland Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9698**) that:

1. Carrier violated the Agreement on Sunday, August 16, 1981, by using junior employee to work the 2nd Trick, PN Office, **Rigby** Yard, eight (8) hours at punitive rate.

2. Carrier shall now be required to compensate Operator M. **J. Hanscom**, for eight (8) hours at punitive rate of pay, Sunday, August 16, 1981, as a result of said violation of the Agreement.

OPINION OF BOARD: This dispute deals with the application of seniority to a rest day "spare work" assignment. There is no question but that Carrier used a junior **employee** to Claimant to cover the assignment in question. The crux of the matter is whether indeed Claimant was available for the assignment.

First, the record indicates that the vacancy in question was a "further-notice" type which in fact lasted for three days commencing Sunday, August 16, 1981. Article 35(**b**) of the Agreement provides as follows:

"(**b**) Spare work will be assigned to and performed by spare employees who will be called according to seniority standing on the roster, provided they are qualified and available and will complete the assignments except as otherwise provided in paragraph (a), or (**c**), or (**d**) of this Article, or when diverted therefrom in emergency cases; in the latter instances the provisions of Article 15 will apply.

Spare employees must accept calls for service in accordance with the foregoing paragraph, except in cases of illness **or** other legitimate reasons."

The record indicates that all the employees involved in this matter were at the time Spare Operators. Claimant was on a vacancy as a Spare Operator and was not available except in an emergency, which was not alleged by Carrier. The **employee** called, though junior to Claimant, had just completed a spare assignment and was available since he was without assignment; he was available, however, at the punitive rate only, by virtue of the assignment he had just completed.

It is the Board's conclusion that Carrier had no obligation to call Claimant to fill a part of the vacancy in dispute (in view of his continuing assignment) when there was a man available on the Spareboard who had **no** further assignment. It is also noted that there was **no** loss of pay involved in this matter and Carrier had to pay the punitive rate to the **employee** used.

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

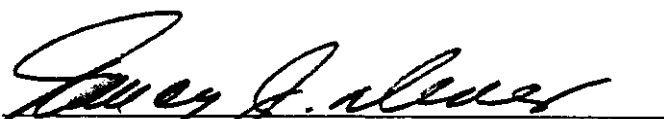
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.

