

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27936
Docket No. CL-28073
89-3-87-3-677

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10204) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Los Angeles, California, when it failed to compensate G. A. Wollerton III, eight (8) hours' pay at straight time on Position No. 6328, account not able to work his assigned position because of Federal Hours of Service Law, and

(b) G. A. Wollerton III shall now be compensated for eight (8) hours' at the straight time rate in addition to any compensation he may have received for this day."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Claimant is the regularly assigned occupant of Operator Position No. 6328 Mission Tower, Los Angeles, California. He works 7:00 A.M. to 3:00 P.M., Tuesday through Saturday. On Monday, July 7, 1986, his rest day, Carrier required Claimant to cover an Operator position for which no qualified employee was available. As a result of being required to work 11:00 P.M. to 7:00 A.M., Claimant, because of the Hours of Service Law, could not cover his regular 7:00 A.M. to 3:00 P.M. assignment on Tuesday, July 8, 1986. Claimant claimed eight hours for Tuesday, July 8, 1986. Carrier denied the payment on the basis that the Hours of Service Law restricted Claimant from working, not the Carrier. The dispute has been placed before this Board for final resolution.

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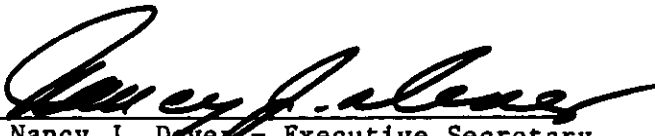
The Board has reviewed the Agreement language involved and the numerous Awards submitted by both sides. The weight of the pertinent Awards seems to fall in favor of Organization's position. It appears that most recent Awards (see Third Division Awards 23393, 24071, 24921) have decided that when Claimants are used by the Carrier to cover assignments that put them in conflict with the Hours of Service Law, they should be paid for not being allowed to work a regular assignment. The Board in this instance shall follow those Awards.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1989.