

The Third Division consisted of the regular members and in addition Referee George S. Roukis 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-10190) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Lubbock, Texas, on June 7, 1986, when it failed and/or refused to call J. J. Moore to protect the short vacancy of Car Clerk Tag-in Position No. 6293, and

(b) Claimant J. J. Moore shall now be compensated eight (8) hours' pro rata rate of pay at the rate of \$101.27, Position No. 6293 for June 7, 1986. Claimant J. J. Moore should also be compensated any health, welfare and/or fringe benefits and this to be in addition to any other compensation she may have received for this date."

FINDINGS:

The Third 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 employees 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.

The Organization charged that Carrier violated the controlling Agreement, particularly Rule 14, when Carrier called a regularly assigned employee to protect a short vacancy on Car Clerk Tag-end Position No. 6293 on June 7, 1986. Specifically, the Organization maintained that since Claimant was the senior off-in-force reduction employee available to protect this assignment, she should have been called to work this vacant position. It reviewed the applicable language of Rule 14, particularly the operative provisions relating

to the definition of a short vacancy and the procedures governing availability, responding and order of call-in precedence and asserted that a violation occurred when Carrier failed to call Claimant for the short vacancy. Furthermore, it also disputed Carrier's position that since a short vacancy existed on a PAD Communications Coordinator position on June 8, 1986, circumstances, and Agreement constraints, required calling Claimant to fill the aforesaid position. In essence, it argued that notwithstanding Claimant's selection rights to both positions, Carrier was effectively precluded from holding Claimant off the first short vacancy in order to have her protect another short vacancy on the following day.

Carrier argued that Rule 14 was inapplicable since the Tag-end day in question was not a definable short vacancy. It observed that inasmuch as no one was assigned to protect Position No. 6293 on Saturday and Sunday, the actual rest days of this position on June 7, 1986, Rule 32-E was applicable, since the work was not part of any assignment. It also noted that Claimant was originally called to protect Position No. 6293, but because a short vacancy developed on a PAD Communications Coordinator position in the Division Center on June 8, 1986, it was necessary to call Claimant to fill this vacancy. It premised its actions on the asserted applicability of Rule 32-E and on the grounds that calling Claimant to fill both vacancies would have been a violation of the Federal Hours of Service Law.

In considering this case, the Board concurs with Carrier's position. Since we are convinced that the rest days of Position No. 6293 were Saturday and Sunday, and not Thursday and Friday, circa June 1986, we must conclude that June 7, 1986, was not a regular work day. Thus, Rule 14 need not be applied under these circumstances. Initially Carrier called Claimant to fill the above position and later rescinded this assignment and called her for the PAD Communications Coordinator position on June 8, 1986. If June 7, 1986, were a regular work day the Organization's assertions would be correct and Carrier could not assign her on implicit grounds of convenience. Further support for our position rests on the Organization's interpretative perspective, when it asserted that since Saturday, June 7, 1986, was a result work day, which it was not in this instance, the resulting short vacancy was subject to the provisions of the Zone Extra Board Agreement and/or Rule 14. We will not address some of the other arguments raised by both sides, since our determination herein moots these ancillary concerns. We hasten to point out, however, that even though Claimant sought to withdraw the Claim, it is the Organization which determines whether a claim is to be abandoned or pursued. Her request or Carrier's reliance upon that request does not presuppose the invalidity of the claims.

A W A R D

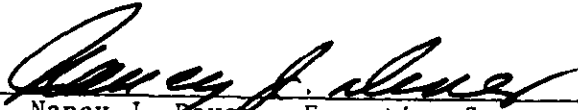
Claim denied.

Form 1
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Award No. 28238
Docket No. CL-28003
90-3-87-3-527

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1990.