

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10297) that:

1. Carrier violated the effective Telegraphers' Agreement when it failed to call Operator L. Elias for service on his rest days, July 16 and August 21, 1987, in preference to employees junior in service to Claimant.

2. Carrier shall now compensate Mr. Elias eight (8) hours' pay at the time and one-half rate for each of these two dates."

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 parties agree about the facts of this case and that the Agreement was violated. The question before the Board is whether the Claimant is entitled to the overtime rate of pay for work not performed. The Board notes that it was unrefuted on the property that in the past the Carrier made payment at the straight time for claims such as this.

In view of all of the foregoing, we hold that the appropriate rate of compensation for work not performed is at the pro rata straight time rate, and Claimant is entitled to such.

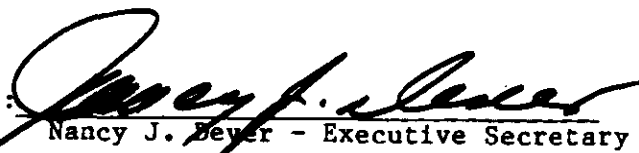
Form 1
Page 2

Award No. 28277
Docket No. CL-28437
90-3-88-3-326

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1990.