

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29769
Docket No. CL-29557
93-3-90-3-522

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10510) that:

1. Carrier violated the provisions of the current Clerks' Agreement at Evansville, Indiana, on Friday, June 17, 1988, when it failed and/or refused to call Clerk J. A. Robey, ID 169749, from the Overtime Board to fill the short vacancy of 11 p.m. HD/ATK Caller, Position No. 303, opting instead to fill said position with B. A. Walsh, a junior Clerk.
2. As a consequence of the above violation, Carrier shall now compensate Clerk Robey, ID 169749, eight (8) hours' pay at the punitive rate (\$21.38/hr), HD/ATK Caller Position No. 303, for Friday, June 13, 1988, in addition to any other compensation she may have received for that 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 employe or employes involved in this dispute are respectively carrier and employe 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.

On June 17, 1988, a vacancy arose on Position No. 303, which could not be filled from the Evansville, Indiana, Extra Board. The Carrier was compelled to call an employee to work the vacancy on an overtime basis beginning at 11:00 p.m. Claimant, who occupied a

Guaranteed Extra Board position at Evansville, had completed her five shifts for the week at 3:00 p.m. on June 17, 1988. Previously, she had signed up to protect extra work on the overtime board in accord with Rule 15(k). The Carrier called and assigned an employee junior to Claimant on the overtime board to fill the vacancy on Position No. 303.

On her June 23, 1988 Claim, Claimant wrote that she was at home between 9:00 and 11:00 p.m. on June 17, 1988, and she did not receive any telephone call from the Carrier. On the other hand, the Trainmaster asked the caller, who was on duty on June 17, whether Claimant had been called. The Trainmaster related that the caller responded that he had attempted to call Claimant, but received no answer. There is not any documentary notation on the call records indicating any attempts were made to call Claimant on the evening of June 17.

Since the Carrier failed to keep any written document or record of the order of calls it purportedly made on June 17, the Carrier was unable to rebut Claimant's written assertion that she was available prior to 11:00 p.m. on June 17 and she was not called. Absent some record, the Trainmaster's double hearsay statement was uncorroborated.

If the caller had kept a notation of the time of call to Claimant's number and the result of the call, the Carrier would have created an irreconcilable factual conflict which this Board would have been unable to resolve. However, within the confines of this particular record, the Organization met its burden of proof. This Board however, restricts its decision to the peculiar circumstances in this case.

Claimant is entitled to eight hours of straight-time pay at the rate in effect on June 17, 1988.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.