

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29815
Docket No. CL-29847
93-3-91-3-222

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles 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-10574) that:

1. Carrier is in violation of the Clerical Agreement at Birmingham, Alabama on September 16, 1989, by failing and/or refusing to call an extra clerk to work Driver/Bowl Clerk's Position No. 216.
2. Claimant, Senior Clerk Available, Extra Clerk in preference, shall now be compensated eight (8) hours' pay at the rate of Driver Position No. 216 in addition to any other compensation this claimant may have already 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 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 September 16, 1989, the Carrier blanked Driver/Utility Clerk Position No. 216. When the computer is "down" an employee must physically go to the Bowl Office to check cuts of cars. The Organization asserts that the Driver/Utility Clerk is the designated person to go to the Bowl for that purpose, but here, the incumbent of RWC/Billing Position No. 224 was used for that purpose for four hours. The Carrier asserted that it may use "...whomever we can whose work load is such that they can be pulled off their job."

But, in 1987, Carrier's Trainmaster certainly implied that the occupant of Position No. 216, the title of which was Bowl Clerk at that time, was the designated person to perform the task when he wrote, concerning the Bowl Clerk:

"The Bowl clerk must be returned to the Bowl within ten minutes after initial call. The Bowl Yardmaster will allow enough time for the Bowl clerk to return before pulling. If the Bowl clerk is out on a move and cannot be immediately sent to the Bowl, the Supervisor TSC will be contacted and will use another employee until such time as the Bowl clerk returns....."

The Carrier's Director Labor Relations also made the following concessions:

"On the date in question, due to a power failure, the Carrier's computer system, went down and it was necessary to send an employee to the Bowl Yard to check cars coming out of the Bowl. The Supervisor on duty determined that Clerk Willingham, occupant of Pos. No. 224, was sent to the Bowl to check cars in compliance with Mr. Jacks' instructions."

We have often held that when a Carrier blanks a position it does so at its peril, and cannot be heard to complain when its own voluntary blanking action creates the problem. Under the Carrier's cited language, it may use another employee to check the Bowl, "if the Bowl Clerk is out on a move." That was not the case here. The unavailability of the Driver/Utility Clerk (Bowl Clerk) was not related to his absence because he was busy with other tasks; it was related to the fact that the position was blanked.

Carrier asserted that portions of the Organization's contentions were not handled on the property. This Board has considered only the exchange of correspondence at that level.

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The fact that a Claimant was not named is not fatal since the Organization described the appropriate person, and we refuse to limit the amount of time payable under a call situation.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 29th day of September 1993.